Supreme Court, U.S.
FILED
JAN 24 2005
OFFICE OF THE CLERK

No. 041065

IN THE

Supreme Court of the United States

INTERCONTINENTAL ELECTRONICS, S.p.A.,
a foreign corporation,
Petitioner,

v.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
jointly and severally,
Respondents.

Petition for a Writ of Certiorari to the Michigan Supreme Court

PETITION FOR A WRIT OF CERTIORARI

S. PATRICK MCKEY *
WALLACE C. SOLBERG
JOEL C. GRISWOLD
BELL, BOYD & LLOYD, LLC
Three First National Plaza
70 West Madison Street, Suite 3700
Chicago, Illinois 60602
(312) 372-1121

JAMES E. BRENNER
PAUL C. SMITH
BRIAN M. ZIFF
CLARK HILL PLC
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226
(313) 965-8300

* Counsel of Record

Attorneys for Petitioner

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioner Was Denied Due Process When Service Of A Counterclaim Was Made Only Upon An Attorney Who Filed A Complaint And Began Prosecuting A Lawsuit Solely In Petitioner's Name—Without Petitioner's Authorization, Knowledge Or Participation.

2. Whether Petitioner Was Denied Due Process And/Or An Opportunity To Defend When Served With Notice Of Hearing On Entry Of A $2,552,012.97 Default Judgment Against It Where Such Notice Was: (1) Sent By U.S. Mail And Registered Mail From The United States To Italy; (2) Received The Day Before The Hearing; And, (3) Written In English When Petitioner's Language Was Italian.

CORPORATE DISCLOSURE STATEMENT

Petitioner, Intercontinental Electronics, S.p.A. by its undersigned attorneys, hereby furnishes the following disclosure statement in compliance with Supreme Court Rules 14(b) and 29.6:

1. Full Name of Party Represented: Intercontinental Electronics, S.p.A.
2. Is Party a Corporation?: Yes
   a. Parent Corporation: None
   b. List of Corporate Stockholders that are Publicly Held Companies Owning 10% or More of the Stock of Represented Party: None

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	iv
OPINIONS AND ORDERS BELOW	1
JURISDICTIONAL STATEMENT	2
CONSTITUTIONAL PROVISIONS	2
STATUTORY PROVISIONS	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING CERTIORARI	8
I. PETITIONER WAS DENIED DUE PROCESS BECAUSE IT WAS NOT SERVED WITH THE COUNTERCLAIM UPON WHICH THE TRIAL COURT ENTERED A MULTI-MILLION DOLLAR DEFAULT JUDGMENT	11
II. PETITIONER WAS DENIED ITS DUE PROCESS BECAUSE IT DID NOT RECEIVE NOTICE OF THE DEFAULT JUDGMENT HEARING ON DAMAGES THAT WAS REASONABLE UNDER ALL THE CIRCUMSTANCES	13
CONCLUSION	16

TABLE OF AUTHORITIES

Cases	Page
American Central Corp. v. Stevens Van Lines, 103 Mich. App 507, 303 NW2d 234 (1981)	14
Bye v. Ferguson, 138 Mich App 196, 360 NW2d 175 (1984)	13
Deeb v. Berri, 118 Mich App 556; 325 NW2d 493 (1982)	13
Dollar Rent-A-Car Systems v. Nodel Constr. Co., Inc., 172 Mich App 738; 432 NW2d 423	15
Frankenmuth Insurance Co. v. ACO, Inc., 193 Mich App 389, 484 NW2d 718 (1992)	12
Grosjean v. American Press Co., 297 U.S. 233, 244 (1936)	8
In re AMB, 248 Mich App 144, 640 NW2d 262 (2001)	13
Meyer v. Walker Land Reclamation, Inc., 103 Mich App 526; 302 NW2d 906 (1981)	14
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652 (1950)	8, 9, 14, 15
National Car Rental v S & D Leasing, Inc., 89 Mich App 364, 280 NW2d 529 (1979)	13
Perry v. Perry, 176 Mich App 762; 440 NW2d 93 1989)	13
Sinai Hospital of Detroit v. Sivak, 88 Mich App 68, 276 NW2d 518 (1979)	9, 10
Traxler v. Ford Motor Co., 227 Mich App 276; 576 NW2d 398 (1998)	13
Federal Authorities	
Hague Convention on Service Abroad	12
United States Constitution, Fourteenth Amendment	8

TABLE OF AUTHORITIES—Continued

Michigan Statutes	Page
MCR 2.107	15
MCR 2.201	9, 10
MCR 2.603	15

IN THE

Supreme Court of the United States

No. ___

INTERCONTINENTAL ELECTRONICS, S.p.A.,
a foreign corporation,

Petitioner,

v.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
jointly and severally,

Respondents.

Petition for a Writ of Certiorari to the Michigan Supreme Court

PETITION FOR A WRIT OF CERTIORARI

OPINIONS AND ORDERS BELOW

On May 15, 2002, the Michigan Circuit Court for Oakland County entered a default judgment against Petitioner in the amount of $2,552,012.97. *Intercontinental Electronics, S.p.A. v. American Keyboard Products, Inc., et al.*, Oakland CC No. 00-024354-CK (Unpublished). On June 12, 2002, the Circuit Court denied Petitioner's Motion to Vacate the Default Judgment. *Id.* On July 2, 2002, Petitioner filed an appeal to the Michigan Court of Appeals. On March 18, 2004, the Court of Appeals affirmed the default, but reduced the amount of the default judgment to $1,552,012.97. *Intercontinental Electronics, S.p.A. v. American Keyboard*

Products, Inc., et al., COA No. 242455 (Unpublished). On October 25, 2004, the Michigan Supreme Court declined review of the decision of the Michigan Court of Appeals. *Intercontinental Electronics, S.p.A. v. American Keyboard Products, Inc., et al.*, SC No. 126058 (Unpublished).

JURISDICTIONAL STATEMENT

On March 18, 2004, the Michigan Court of Appeals affirmed the default, but reduced the amount of the default judgment to $1,552,012.97. In so doing, the Michigan Court of Appeals, like the trial court, despite acknowledging the possibility that Petitioner may not be a real party-plaintiff to the lawsuit and opposing counsel may not represent Petitioner, held that Petitioner received service of process sufficient to satisfy due process requirements under the Fourteenth Amendment of the United States Constitution when Respondents served opposing counsel. Moreover, the Court of Appeals found that service of the notice of the default judgment hearing was sufficient to satisfy due process requirements under the Fourteenth Amendment of the United States Constitution because notice of the hearing was deposited in the United States mail seven (7) days prior to the hearing—consistent with Michigan statute—despite the fact that the notice was not received by Petitioner in Italy until the eve of the hearing halfway across the globe.

On October 25, 2004, the Michigan Supreme Court declined review of the decision of the Michigan Court of Appeals. This Court has jurisdiction over this matter under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const., 14th Amend.

MISC.

Hague Convention on Service Abroad (See Appendix at 20)

STATUTORY PROVISIONS

MCR 2.107 (See Appendix at 17)

MCR 2.201 (See Appendix at 18)

MCR 2.603 (See Appendix at 19)

STATEMENT OF THE CASE

1. *Respondents Fail To Pay Their Debt To Petitioner.*

Intercontinental Electronics, S.p.A. ("Petitioner") is an Italian corporation that exports electronic pianos from Italy to the United States. (Appendix at 5, Ex. 1, ¶3). American Keyboard Products, Inc. ("AKP"), a Michigan corporation, entered into an agreement with Petitioner to distribute, in the United States and Canada, pianos exported from Italy by Petitioner. (*Id.*, Ex. 1, ¶4). During the course of the parties' relationship, AKP became indebted to Petitioner for more than $85,000 worth of goods, which Petitioner delivered, but for which Petitioner was not paid. Although AKP paid some of its debt, in 1998 it refused, or otherwise became unable, to pay the remaining balance. (*Id.*, Ex. 1, ¶¶5-9.)

2. *Petitioner Subrogates Its Claim Against Respondents To Petitioner's Insurer.*

As a result of the bad debt, Petitioner submitted a claim to EULER-SIAC Societa Italiana Assicurazione Crediti S.p.A. ("EULER SIAC"). EULER SIAC is an Italian insurance

company that provides coverage to Italian businesses for bad foreign (*i.e.*, non-Italian) contractual debt. EULER SIAC paid Petitioner's claim arising from the AKP debt. As a condition of this payment, Petitioner became obligated, under Italian law, to allow EULER SIAC to pursue a subrogation action against AKP. (*Id.*, ¶¶10-11, 13.)

3. *KKG&R And Euler File Suit Against Respondents Solely In Petitioner's Name—Without Petitioner's Knowledge, Authorization Or Participation.*

In furtherance of its subrogation rights, EULER SIAC's United States' based sister corporation, EULER ACI Collection Services, Inc. ("EULER ACI") (collectively, "EULER"), hired Richard Roosen of the Michigan law firm of Kahn, Kahn, Gibson & Roosen, P.C. (collectively, "KKG&R") to collect the debt from AKP. Accordingly, KKG&R filed a collection action against AKP. (*Id.*, ¶12). Although EULER hired KKG&R, and was the real party in interest, KKG&R inexplicably filed the complaint solely in ***Petitioner's*** name instead of filing it in EULER's name, as subrogee of Petitioner. (Appendix at 15). That crucial mistake is where the problems begin.

4. *Respondents File A Counterclaim Against Petitioner And Serve The Counterclaim On KKG&R.*

On April 26, 2001, AKP and two of its shareholders (collectively, "Respondents") filed a counterclaim against Petitioner ("Counterclaim"). Respondents mailed a copy of the Counterclaim to KKG&R's office, as purported service upon Petitioner. Petitioner received no notice that a Counterclaim had been filed, nor did Petitioner ever retain KKG&R to defend the Counterclaim. (Appendix at 5, Ex. 1, ¶15).

On June 4, 2001, KKG&R filed an Answer to the Counterclaim and Affirmative Defenses on behalf of Petitioner—again, without Petitioner's authorization, knowledge or participation. (Appendix at 14).

5. *KKG&R Withdraws And A Default Is Entered Against Petitioner.*

On July 18, 2001, the trial court granted KKG&R's unopposed motion to withdraw from the case. The trial court ordered, in pertinent part, that KKG&R was to provide Petitioner with notice of the court's order and ordered Petitioner to file a substitute appearance within 30 days or a default may be entered on the Counterclaim. (Appendix at 12). Petitioner, however, never received a copy of the July 18, 2001 Order. (Appendix at 5, Ex. 1, ¶16).

Without notice of KKG&R's withdrawal, and not being the real party in interest, Petitioner did not file an appearance within the 30 days allotted by the trial court. On August 28, 2001, Petitioner, without notice, did not appear at the pretrial conference and the trial court entered a default against Petitioner.[1] (Appendix at 10).

6. *Respondents Move For Entry Of Judgment On Default Against Petitioner For Over $2.5 Million – And Serve Notice Of The Hearing Upon Petitioner By Mail, In Italy, Which Is Received The Night Before The Hearing On The Motion In Michigan.*

On May 1, 2002, Respondents moved for entry of a judgment on the default. (Appendix at 9). On that same day, Respondents sent notice of the motion, in English only, to

---

[1] In September 2001, Petitioner received a copy of the default and faxed it to EULER SIAC for an explanation, which was not forthcoming. On October 16, 2001, Petitioner received an additional copy of the default and again sent it to EULER SIAC for explanation. EULER responded with a letter to Petitioner stating: "After receiving the attached documents, it is recommended they be ignored since the case was dismissed and no further action was being taken." (Appendix at 5, Ex. 1, ¶22). On November 9, 2001, Petitioner was advised that the collection action had been concluded. (*Id.*, ¶¶19-23.) Nothing else happened in the case until May 2002.

Petitioner, in Italy, by U.S. mail. (Appendix at 8). The hearing on Respondents' motion was set to take place on May 15, 2002 at 8:30 a.m. (Appendix at 5, Ex. 1, Internal Ex. M). Petitioner, in Italy, did not receive the notice until May 14, 2002, ***on the eve of the hearing Michigan***. (*Id.*, Ex. 1, ¶24) Petitioner promptly sent the motion to counsel in the United States for an explanation, but this transmission was not received until after 8:30 on the morning of May 15, 2002.

At the hearing, the trial court awarded Respondents all damages requested against Petitioner—totaling more than $2.5 million. (Appendix at 6; Appendix at 7).

7. *Petitioner Moves to Set Aside Default and Default Judgment*

On June 5, 2002, within the period of time prescribed by Michigan law to move to set aside such a judgment, Petitioner (represented by its own counsel for the first time in the litigation) filed a motion to set aside the default and judgment. MCR 2.603(D) In the motion, which was supported by the affidavit of Mauro Galanti (Petitioner's President), Petitioner argued, in pertinent part, that: (1) the Complaint had been filed by KKG&R and EULER in Petitioner's name without Petitioner's participation or direction (Petitioner having already been made whole by EULER); and, (2) that Petitioner did not receive adequate notice of the default judgment hearing.

On June 12, 2002, the trial court denied Petitioner's Motion to Set Aside the Default and Default Judgment. In doing so, the trial court refused to address the issue of whether Petitioner was, in fact, a party to the lawsuit. Specifically, the trial court stated that it was "***not up to this court to determine who is the real party in interest but simply to see that notices are given to - to the plaintiff and the counter-defendant.***" (Appendix at 4, pp. 17-18 (emphasis added)). Astonishingly, the trial court held that, even

if Petitioner was not a real party-plaintiff, that fact would not "overcome the numerous notices and attempts to get the attention of Intercontinental." (*Id.*, p. 18). On that basis, the trial court erroneously exercised personal jurisdiction over Petitioner, found that notice of the default hearing was sufficient and, accordingly, denied Petitioner's motion to set aside the default - thereby allowing its $2.5 million judgment to stand.

8. *The Court of Appeals Affirms The Default.*

On July 7, 2002, Petitioner appealed, as a matter of right, from the trial court's denial of the Motion to Set Aside the Default to the Michigan Court of Appeals. In the Court of Appeals, Petitioner argued, amongst other things, that: (1) the trial court never acquired personal jurisdiction over Petitioner because EULER was the real party in interest and KKG&R wrongfully named Petitioner as plaintiff to the action, (Appendix at 2, p. 3); and, (2) Petitioner was denied due process because it did not receive reasonable notice of the default judgment hearing, (*Id.*, pp.1-3).

On March 18, 2004, the Court of Appeals panel issued its opinion. (Appendix at 2). The Court of Appeals rejected Petitioner's personal jurisdiction and due process arguments, despite the requirement of MCR 2.201(b) that "an action must be prosecuted in the name of the real party in interest," and affirmed the entry of the default, but reduced the amount of the default judgment to $1,552,012.97. In affirming the trial court's entry of default and default judgment, the Court of Appeals, like the trial court, ignored the issue of whether Petitioner was, in fact, a real party-plaintiff to the action. Though the Court of Appeals did not address the issue of whether Petitioner was a party or non-party to the litigation, it opined, nonetheless, that Petitioner received adequate notice. Instead of addressing the issue, the Court of Appeals noted that "[i]f plaintiff's attorney of record improperly represented

himself as the attorney for the plaintiff, plaintiff's remedy lies in a suit against its counsel." (Appendix at 2, p. 3).

9. *The Michigan Supreme Court Declines Review Of Petitioner's Appeal.*

On April 29, 2004, Petitioner filed a petition for review of the Michigan Court of Appeals decision with the Michigan Supreme Court. On October 25, 2004, the Michigan Supreme Court declined review of the Petitioner's appeal. (Appendix at 1).

REASONS FOR GRANTING CERTIORARI

The Petition should be granted because the Michigan Circuit Court for Oakland County ("trial court") and the Michigan Court of Appeals ("Court of Appeals") have decided an important federal question in a way that conflicts with the decisions of this Court regarding due process under the Fourteenth Amendment and, by doing so, have deprived Petitioner of its property in the amount of $1,552,012.97, plus interest and costs.[2]

The Fourteenth Amendment to the United States Constitution provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any state deprive any person of life, liberty or property without due process of law***; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const., 14th Amend. (emphasis added). In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70

---

[2] Petitioner is entitled to the due process protections of the Fourteenth Amendment. *Grosjean v. American Press Co.*, 297 U.S. 233, 244 (1936) ("[A] corporation is a 'person' within the meaning of the equal protection and due process clauses . . .")

S.Ct. 652, 657 (1950), the Supreme Court defines the due process requirements of notice. Specifically, in *Mullane*, the Court explains that:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is ***notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections***. The notice must be of such nature as reasonably to convey the required information . . . ***and it must afford a reasonable time for those interested to make their appearance***.

Id. (internal quotations omitted)(emphasis added).

The trial court and Court of Appeals entered and affirmed, respectively, a default judgment against Petitioner in the amount of $1,552,012.97. In doing so, both courts acknowledged the possibility that Petitioner may have been a non-party rather than a real party-plaintiff to the litigation. (Appendix at 4, pp. 17-18; Appendix at 2, p. 3). Although the issue of whether Petitioner was a party to the litigation determines the type of notice and service required, both courts ignored this issue in rejecting Petitioner's argument that it did not receive notice of the Counterclaim and default judgment hearing consistent with due process.

The trial court and Court of Appeals deprived Petitioner of its right to due process by declining to determine whether Petitioner was a real party-plaintiff to the action. In Michigan, "[a]n action must be prosecuted in the name of the real party in interest . . ." MCR 2.201(B). "The subrogee is generally recognized as the real party in interest." *See Sinai Hospital of Detroit v. Sivak*, 88 Mich.App. 68, 72, 276 NW2d 518, 520 (1979) (insurer, not insured, was the real party in interest and action was required to be brought in name of insurer). "Generally, an insured, who no longer has any interest in the recovery, cannot sue." *Id.*

KKG&R was obligated to name EULER as the subrogee of Petitioner and, therefore, the real party in interest. Specifically, EULER, through its insurance contract with Petitioner, became a subrogee to Petitioner and was vested with the right to pursue a collection action against AKP. (Appendix at 5, Ex. 1, ¶11.) Accordingly, KKG&R was obligated to file suit in the name of EULER, the real party in interest. See MCR 2.201(B); *see also Sinai Hospital*, 88 Mich App at 72.

Furthermore, as Petitioner repeatedly explained to the trial court and Court of Appeals, KKG&R had filed the Complaint solely in Petitioner's name without Petitioner's authorization, knowledge or participation. (Appendix at 4; Appendix at 5).

In denying Petitioner's Motion to Set Aside the Default, the trial court erred in ruling that it was not required to determine the real party in interest as long as notices were sent to the named party-plaintiff. (Appendix at 4, pp 17-18). Specifically, the Court held:

> [T]he defense appears to be that Petitioner was not the real party in interest here and simply was told by real party in interest that it didn't have to do anything, and as also presented what—I'm going to assume that there's a meritorious defense that has been presented.
>
> So I'm looking at the good cause and I think that there were numerous attempts by this Court to get the attention of Petitioner and ***its not up to this Court to determine who is the real party in interest but simply to see that notices are given to – to the plaintiff and to the counter-defendant.***

(*Id.*) (emphasis added). Because the trial court failed to determine whether Petitioner was a party to the litigation, the trial court erred in: (1) asserting personal jurisdiction over Petitioner because Petitioner never filed suit or was served with process for suit in Michigan; and, (2) ruling that any notices purportedly sent to Petitioner were proper, including,

but not limited to the May 15, 2002 hearing for entry of the default judgment.

Unfortunately, the Court of Appeals, like the trial court, declined to address the issue of whether Petitioner was the real party in interest and a party to the litigation, stating:

> . . . the proof of service indicated that the counterclaim was properly served on [Petitioner's] attorney, and the affidavit by one of [Petitioner's] officers indicates that [Petitioner] received notice on March 31, 2001, that defendant considered filing a counterclaim. ***If [Petitioner's] attorney of record improperly represented himself as the attorney for [Petitioner], [Petitioner's] remedy lies in a suit against its counsel.***

(Appendix at 2, p. 3) (emphasis added). The Court of Appeals' opinion on this matter, like that of the trial court, is based upon the faulty premise that KKG&R was authorized to accept service on behalf of Petitioner. Without a determination of whether Petitioner was the real party in interest, however, both the trial court and Court of Appeals could not, and should not, have determined that Petitioner was properly served with the Counterclaim or any subsequent pleadings.

I. PETITIONER WAS DENIED DUE PROCESS BECAUSE IT WAS NOT SERVED WITH THE COUNTERCLAIM UPON WHICH THE TRIAL COURT ENTERED A MULTI-MILLION DOLLAR DEFAULT JUDGMENT.

The trial court and Court of Appeals deprived Petitioner of due process by acknowledging the possibility that KKG&R did not represent Petitioner, yet finding that mailing the Counterclaim to KKG&R was sufficient service upon Petitioner. Indeed, if Petitioner was not the real party in interest, and therefore not a party to the litigation, Respondents would have been obligated to serve process upon

Petitioner pursuant to the Hague Convention on Service Abroad ("Hague Convention"), as both the United States and Italy are signatories to the treaty. *See Frankenmuth Mutual Ins. Co. v. Aco, Inc.*, 193 Mich App 389, 392-393; 484 NW2d 718 (1992). The Hague Convention "applies in all cases where there is occasion to transmit a judicial or extrajudicial document for service abroad." *Id.* at 392. The Hague Convention "preempts inconsistent methods of service prescribed by state law in all cases to which the convention applies." *Id.*

The Counterclaim was not served on Petitioner in Italy, much less pursuant to the Hague Convention. (Appendix at 16). Rather, the Counterclaim was mailed to the office of KKG&R. (*Id.*). KKG&R was not an authorized agent for the receipt of service of process or counsel for Petitioner. (Appendix at 5, Ex. 1, ¶¶12-15). Accordingly, without a determination as to whether Petitioner was the true party in interest, both courts erred in ruling that Petitioner had received proper service and/or notice. Only by determining who is the real party in interest could a ruling be made on which method of service/notice is correct: service of process in Italy upon Petitioner ***or*** service as was done in this litigation, by mailing a copy of the Counterclaim to KKG&R. Both the trial court and the Court of Appeals committed error in determining that Petitioner had been properly served and received proper notice.

Accordingly, Petitioner was denied a meaningful opportunity to be heard in the proceeding that triggered the default and was thus denied due process of law.[3] Due process

---

[3] While Petitioner received a notice of the August 28, 2001 pre-trial conference from the trial court, it did not receive such notice until August 29, 2001—***after*** the hearing had already been conducted. (Appendix at 5, Ex. 1, ¶17). In any event, the notice did not indicate that: (1) KKG&R had withdrawn; or, (2) Intercontinental would be defaulted for failing to appear at the pre-trial conference.

"requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Traxler v. Ford Motor Co.*, 227 Mich App 276, 288; 576 NW2d 398 (1998); *see also Bye v. Ferguson*, 138 Mich App 196, 205-206, 360 NW2d 175 (1984)(holding that due process requires that a party receive actual notice of the withdrawal of his or her attorney before further proceedings are conducted); *Deeb v. Berri*, 118 Mich App 556, 563; 325 NW2d 493 (1982) (explaining that the failure to receive the requisite notice regarding default proceedings amounts to a denial of due process).

Moreover, if it was determined that Petitioner was not a party to the litigation, service of the Counterclaim upon Petitioner in Italy would have been required in compliance with the Hague Convention in order for the trial court to assert personal jurisdiction over Petitioner. Indeed, lack of notice must be considered a "jurisdictional" defect. *In re AMB*, 248 Mich App 144, 640 NW2d 262 (2001); *National Car Rental v. S & D Leasing, Inc.*, 89 Mich App 364, 367-370; 280 NW2d 529 (1979) (holding that the lack of actual notice to the plaintiff regarding a counterclaim was "sufficient to set aside the default" entered against the plaintiff).

II. PETITIONER WAS DENIED ITS DUE PROCESS BECAUSE IT DID NOT RECEIVE NOTICE OF THE DEFAULT JUDGMENT HEARING ON DAMAGES THAT WAS REASONABLE UNDER ALL THE CIRCUMSTANCES.

Even assuming, *arguendo*, the Counterclaim was properly served upon Petitioner, the award of damages should be vacated in its entirety because Petitioner was not given reasonable notice of the May 15, 2002 default judgment hearing on damages. "[O]nce a valid default is taken, the defaulting party is entitled to full participatory rights in any hearing necessary for the adjudication of damages." *Perry v.*

Perry, 176 Mich App 762, 767, 440 NW2d 93 (1989), *citing Wood v. DAME*, 413 Mich. 573, 583-585; 321 NW2d 653 (1982). A damages hearing is necessary where the amount of damages is unliquidated. See, e.g., *American Central Corp v. Stevens Van Lines*, 103 Mich App 507, 513; 303 NW2d 234 (1981). Denial of the right to fully participate in the damages hearing after a default constitutes a denial of the constitutional right to due process and is reversible error. *See, e.g., Perry*, at 770; *see also Meyer v. Walker Land Reclamation, Inc.*, 103 Mich App 526, 541; 302 NW2d 906 (1981).

Petitioner did not receive notice "reasonably calculated under all the circumstances" to "afford [it] an opportunity to present its objections" to the default judgment. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950). The United States Supreme Court explains that :

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality ***is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections***. The notice must be of such nature as reasonably to convey the required information . . . ***and it must afford a reasonable time for those interested to make their appearance***.

Id. (emphasis added) (internal citations omitted). A notice of a hearing for a default judgment, in English only, that is sent by U.S. Mail to an Italian speaking party in Italy—and which is received on the eve such hearing is to be held in Michigan—is not notice reasonably calculated to afford an opportunity to appear and present objections.

The Michigan Court of Appeals erred in holding that Petitioner's receipt of notice, in Italy, on the day before the default judgment hearing in Michigan, was sufficient due process. Specifically, the Court of Appeals found that the

notice given to Petitioner was sufficient to satisfy due process because: (1) it was served in compliance with Michigan Court Rules governing notice; (2) Petitioner received actual notice of the hearing on the default judgment; and, (3) Petitioner had notice that a default had been entered. (Appendix at 2, p. 2); *see* MCR 2.603; *see also* MCR 2.107(C)(3). Under MCR 2.603, the party seeking judgment on a default must give the defaulted party at least seven (7) days notice before entry of the requested judgment. MCR 2.603(B)(1); *Dollar Rent-A-Car Systems v Nodel Constr. Co, Inc.*, 172 Mich App 738, 744; 432 NW2d 423 (1988). Under MCR 2.107, service is complete upon mailing. MCR 2.107(C)(3).

Assuming, *arguendo*, that Respondents served notice consistent with Michigan statute and received the notice before the hearing began, "process which is a mere gesture is not due process." *Mullane*, 339 U.S. at 314, 70 S.Ct. at 657. Indeed, the circumstances surrounding the notice at issue in effect rendered the notice meaningless. On May 1, 2002, Respondents deposited notice of the May 15, 2002 hearing in the U.S. Mail, thereby purportedly complying with MCR 2.603(B)(1). On May 14, 2002, *thirteen (13) days later*, Petitioner received notice of the hearing to take place the next morning.[4] (Appendix at 5, Ex. 1, ¶24). Nothing in the record

[4] This case illustrates the need for due process review beyond mere compliance with state statutes regarding notice. Indeed, following the Court of Appeals' reasoning, the notice to Petitioner would have been adequate even if mailed on May 8, 2002 because such service would have comported with MCR 2.603(B)(1) since the notice was mailed seven (7) days in advance of the hearing. However, as demonstrated by the undisputed record in this case, it took thirteen (13) days from mailing for the notice of the default hearing to reach Petitioner in Italy. Accordingly, if the notice was mailed on May 8, 2002, assuming thirteen (13) days delivery time, the notice would not have been received by Petitioner until May 21, 2002—six (6) days after the hearing took place. Under these circumstances, MCR 2.603(b)(1) cannot pass constitutional muster because it is not calculated to provide a party with reasonable opportunity to be heard and defend itself.

refutes this fact. Moreover, the notice was sent in English only to an Italian recipient—located in Italy - that does not "speak or read the English language to any significant or meaningful degree." (*Id.*, Ex. 1, ¶2).

Receiving notice the day before the hearing on the entry of default judgment did not afford Petitioner reasonable time to interpret the notice, retain counsel on a different continent and appear the very next morning at the hearing to raise objections. Petitioner simply did not receive notice that was "reasonable under the circumstances" and, accordingly, was denied its right to due process.

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner, Intercontinental Electronics S.p.A., respectfully requests that the Court grant its Petition for Writ of Certiorari.

Respectfully submitted,

S. PATRICK MCKEY *
WALLACE C. SOLBERG
JOEL C. GRISWOLD
BELL, BOYD & LLOYD, LLC
Three First National Plaza
70 West Madison Street, Suite 3700
Chicago, Illinois 60602
(312) 372-1121

JAMES E. BRENNER
PAUL C. SMITH
BRIAN M. ZIFF
CLARK HILL PLC
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226
(313) 965-8300

* Counsel of Record

Attorneys for Petitioner

(2)

Supreme Court, U.S.
FILED

No. 04-1065 JAN 24 2005

IN THE OFFICE OF THE CLERK

Supreme Court of the United States

INTERCONTINENTAL ELECTRONICS, S.p.A.,
a foreign corporation,
Petitioner,

v.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan corporation,
ROBERT C. KOTZ and GREGORY WYSOCKI,
jointly and severally,
Respondents.

Petition for a Writ of Certiorari to the Michigan Supreme Court

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

S. PATRICK MCKEY *
WALLACE C. SOLBERG
JOEL C. GRISWOLD
BELL, BOYD & LLOYD, LLC
Three First National Plaza
70 West Madison Street, Suite 3700
Chicago, Illinois 60602
(312) 372-1121

JAMES E. BRENNER
PAUL C. SMITH
BRIAN M. ZIFF
CLARK HILL PLC
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226
(313) 965-8300

* Counsel of Record

Attorneys for Petitioner

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

TABLE OF CONTENTS

	Page
Appendix A—Michigan Supreme Court Order, dated October 25, 2004	1a
Appendix B—Michigan Court of Appeals Opinion, dated March 18, 2004	3a
Appendix C—Michigan Circuit Court for Oakland County Order Denying Petitioner's Motion to Set Aside Default Judgment, dated June 12, 2002	13a
Appendix D—Transcript of Hearing on Petitioner's Motion to Set Aside Default Judgment, dated June 12, 2002	14a
Appendix E—Petitioner's Motion to Set Aside Default Judgment, dated June 5, 2002	28a
Appendix F—Michigan Circuit Court for Oakland County Order Granting Respondents' Motion for Entry of Default Judgment Against Petitioner, dated May 15, 2002	109a
Appendix G—Transcript of Hearing on Respondents' Motion for Entry of Default Judgment Against Petitioner, dated May 15, 2002	111a
Appendix H—Respondents' Proof of Service of Notice of Hearing on Respondents' Motion for Entry of Default Judgment Against Petitioner, dated May 1, 2002	119a
Appendix I—Respondents' Motion for Entry of Default Judgment Against Petitioner, dated May 1, 2002	122a
Appendix J—Michigan Circuit Court for Oakland County Order of Default Against Petitioner (misnamed as Order of "Default Judgment"), dated August 28, 2001	140a

TABLE OF CONTENTS—Continued

Page

Appendix K—Michigan Circuit Court for Oakland County Order Dismissing Complaint, dated August 28, 2001 ..... 142a

Appendix L—Michigan Circuit Court for Oakland County Order Granting Kahn, Kahn, Gibson & Roosen's Motion to Withdraw as Counsel, dated July 18, 2001 ..... 144a

Appendix M—Transcript of Hearing on Kahn, Kahn, Gibson & Roosen's Motion to Withdraw as Counsel, dated July 18, 2001 ..... 147a

Appendix N—Answer and Affirmative Defenses to Counterclaim, dated June 4, 2001 ..... 154a

Appendix O—Amended Complaint, dated July 18, 2000 ..... 160a

Appendix P—Respondents' Proof of Service of Counterclaim on Richard G. Roosen, Esq., dated April 25, 2001 ..... 172a

Appendix Q—Michigan Court Rule 2.107: Service and Filing of Pleadings and Other Papers 174a

Appendix R—Michigan Court Rule 2.201: Parties Plaintiff and Defendant; Capacity 178a

Appendix S—Michigan Court Rule 2.603: Default and Default Judgment 184a

Appendix T—Hague Convention on Service Abroad ... 188a

APPENDIX A

MICHIGAN SUPREME COURT
LANSING, MICHIGAN

[Filed October 25, 2004]

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SC: 126058
COA: 242455
Oakland CC: 00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
Plaintiff/Counter-Defendant-Appellant,

v

AMERICAN KEYBOARD PRODUCTS, INC., ROBERT C. KOTZ and GREGORY WYSOCKI,
Defendants/Counter-Plaintiffs-Appellees.

ORDER

On order of the Court, the motion for admission *pro hac vice* is GRANTED. The application for leave to appeal the March 18, 2004 judgment of the Court of Appeals is

considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

[Seal]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 25, 2004

/s/ Corbin R. Davis
CORBIN R. DAVIS
Clerk

APPENDIX B

STATE OF MICHIGAN COURT OF APPEALS

UNPUBLISHED

[March 18, 2004]

No. 242455
Oakland Circuit Court
LC No. 00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
Plaintiff/Counterdefendant-Appellant,

v

AMERICAN KEYBOARD PRODUCTS, INC.,
ROBERT C. KOTZ and GREGORY WYSOCKI,
Defendants/Counterplaintiffs-Appellees.

Before: Fort Hood, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

Plaintiff/counterdefendant (plaintiff) appeals as of right from the default judgment entered in favor of defendants/counterplaintiffs (defendants) in this contract action. We affirm in part and reverse in part.

Plaintiff first argues that it was denied its rights to due process because it never received notice of the pretrial conference, at which it failed to appear, triggering the entry of the default against it. We find no basis for relief.

The determination whether a party has been afforded due process is a question of law that we review de novo. *In re Carey*, 241 Mich App 222, 225-226; 615 NW2d 742 (2000). "Underlying the right to due process are the principles of fair play and fundamental fairness?" *Building Owners Ass'n v PSC*, 131 Mich App 504, 513; 346 NW2d 581 (1984). Due

process generally requires notice and an opportunity to be heard. *Dusenbery v US*, 534 US 161, 167; 122 S Ct 694; 151 L Ed 2d 597 (2002); *In re Adams Est*, 257 Mich App 230, 234; 667 NW2d 904 (2003). Notice must be reasonably calculated to apprise interested parties of the pending action and must afford them an opportunity to present objections. *Dusenbery, supra* at 168; *Vincencio v Jaime Ramirez, MD, PC*, 211 Mich App 501, 504; 536 NW2d 280 (1995).

There is a presumption of receipt by the addressee of mail addressed, stamped, and entrusted to the United States postal service for delivery. *Crawford v State of Michigan*, 208 Mich App 117, 121; 527 NW2d 30 (1994). This presumption can be overcome by direct and positive testimony regarding nonreceipt. *See Merchants Nat Bank v Detroit Trust Co*, 258 Mich 526, 535; 242 NW 739 (1932).

At the hearing on plaintiffs counsel's motion to withdraw, the trial court granted the motion and. set a pretrial conference date, stating that plaintiff's failure to appear at the conference would result in a dismissal of plaintiffs complaint and a default on defendants' countercomplaint. A copy of this order was served on plaintiff on the same day, by the placement of it in the United States mail addressed to plaintiff's business. The order was mailed more than a month before the hearing that resulted in the default against plaintiff.

Plaintiff asserts that statements in an affidavit by one of its officers rebutted the presumption that plaintiff received a copy of the order setting the pretrial conference date. However, the statements did not constitute the type of positive, detailed, and direct testimony necessary to overcome the presumption that a document properly mailed was received. *See Antonowich v Home Life Ins Co*, 179 SE 601, 602 (W Va. 1935). Indeed, the affiant in question did not directly state that plaintiff never received notice of the pretrial conference date. Moreover, although the affiant stated that plaintiff received no correspondence within a certain period from its

attorney or its attorney's law firm, he failed to state that he was the person who regularly receives the mail for the company or to provide some other basis for his knowledge. Therefore, the general presumption of receipt by plaintiff of the July 18, 2001 order, which was properly addressed, postage paid, and entrusted to the United States postal service for delivery, applies. Plaintiff was appropriately served with the order setting the pretrial conference date and was not denied its rights to due process.

Next, plaintiff argues that it was denied its rights to due process because it did not receive notice of defendants' motion to enter a default judgment until one day before the hearing on the motion. We note, however, that this issue was not preserved for appellate review because plaintiff did not raise it in the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999); *Michigan Up & Out of Poverty Now Coalition v Michigan*, 210 Mich App 162, 167; 533 NW2d 339 (1995). Assuming the issue had been preserved, however, we find no basis for relief. First, the motion for an entry of judgment was served on plaintiff fourteen days before the hearing in a manner in conformance with MCR 2.107(C)(3). Second, notwithstanding that plaintiff received actual notice of the court hearing on the motion for an entry of judgment the day before the hearing, there is no evidence that plaintiff, or counsel for plaintiff, contacted the court to ask for an adjournment to enable plaintiff to attend the hearing. Finally, plaintiff received a copy of the entry of the default months before the entry of the default judgment. Plaintiff was thus on notice regarding the probable entry of a default judgment, and yet the record reveals no effort by plaintiff to contact the court or defendants' to obtain information concerning the default or the possible entry of a judgment. Because it was properly served under the court rules, received actual notice of the hearing, and knew that a default had been entered against it, plaintiff's due process rights were not violated.

In a related argument, plaintiff contends that it did not receive the seven-day notice required under MCR 2.603 with respect to the default judgment hearing. Plaintiff failed to preserve this issue for our review. *Fast Air, supra* at 549. At any rate, we find no basis for relief. Indeed, service is complete at the time of mailing under MCR 2.107(C)(3). The record indicates that plaintiff had the requisite seven-day notice because the motion to enter a judgment was mailed fourteen days before the motion hearing.

Next, plaintiff argues that the service of the order allowing plaintiff's counsel to withdraw, setting a pretrial conference date, and providing that a default would be entered against plaintiff for failure to appear was not conducted in accordance with the Hague Convention. Once again, plaintiff failed to preserve this issue for review, *Fast Air, supra* at 549, and we once again find no basis for relief.

Whether service comports with the Hague Convention is an issue of law. We review issues of law de novo. *In re Estate of Cummin*, 258 Mich App 402, 406; 671 NW2d 165 (2003). Because this case involved the transmittal of judicial documents abroad, the Hague Convention applies. *Frankenmuth Ins v ACO,Inc*, 193 Mich App 389, 392; 484 NW2d 718 (1992). Article 10 of the Hague Convention states:

> Provided the State of destination does not object, the present Convention shall not interfere with—
>
> > (a) the freedom to send judicial documents, by postal channels, directly to persons abroad . . .

Italy, a signatory of the convention, did not object to Article 10 of the convention, and so this provision applies to service between the United States and Italy. *Eli Lilly and Company v Roussel Corp*, 23 F Supp 2d 460, 470 (D NJ, 1998). While the United States Courts of Appeal are split over whether Article 10(a) applies to service of *process*, there is no dispute that Article 10(a) provides a method of sending subsequent

documents after service of process has been obtained by means of the central authority. *Id* at 471; *Frankenmuth, supra* at 395. We conclude that a subsequent legal document was involved here. Plaintiff was treated in conformance with Article 10(a) of the convention when a copy of the order setting the pretrial conference date was mailed to plaintiff at its business address by United States mail.

Next, plaintiff argues that it was not subject to the trial court's personal jurisdiction because it was not the real party in interest. Plaintiff claims that its insurer filed suit in plaintiffs name and that the insurer was the party responsible for the pursuit of the legal action. We find this claim to be without merit.

The determination regarding whether a court has personal jurisdiction over a party is a question of law that is reviewed de novo on appeal. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001). "The defense of lack of personal jurisdiction is waived unless it is properly raised in a party's first responsive pleading." *Dundee v Puerto Rico Marine Management, Inc*, 147 Mich App 254, 257; 383 NW2d 176 (1985). Plaintiff did not raise the issue of lack of personal jurisdiction either in its answer to the countercomplaint or in its list of affirmative defenses. While plaintiff alleges that it was not "advised in any meaningful form that defendants had filed a counterclaim," the proof of service indicated that the counterclaim was properly served on plaintiff's attorney, and the affidavit by one of plaintiff's officers indicates that plaintiff received notice on March 31, 2001, that defendant was considering filing a counterclaim. If plaintiff's attorney of record improperly represented himself as the attorney for plaintiff, plaintiff's remedy lies in a suit against its counsel.

Next, plaintiff argues that the trial court erred in failing to set aside the default judgment because plaintiff established

good cause for its failure to appear at the pretrial conference.[1] A ruling on a motion to set aside a default judgment is entrusted to the trial court's discretion. *Alken-Ziegler v Waterbury Headers*, 461 Mich 219, 227; 600 NW2d 638 (1999). An abuse of discretion occurs if the result so violates fact and logic that it evidences a perversity of will, defiance of judgment, or passion or bias. *Id.*

MCR 2.603(D) governs motions to set aside a default or a default judgment and provides, in pertinent part:

> (1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over defendant, shall be granted only if good cause is shown and an affidavit of meritorious defense is filed.

Good cause means a substantial irregularity in the proceedings on which the default is based or a reasonable excuse for failure to comply with the requirements that created the default. *Aiken-Ziegler*, *supra* at 233. Manifest injustice is not a discrete occurrence such as a procedural defect or a tardy filing that can be assessed independently, but is the result that would occur if a default were to be allowed to stand when a party has satisfied the meritorious defense and good cause requirements of the court rule. *Id.* at 233-234. "Although the law favors a determination of a claim on the basis of its merits, the policy of this state is generally against setting aside defaults and default judgments that have been properly entered." *ISB Sales Co v Dave's Cake*, 258 Mich App 520, 526; 672 NW2d 181 (2003). The failure to notify a party entitled to notice of the entry of a default constitutes a substantial defect in the proceedings and thus is good cause to set aside the default. *Harvey Cadillac Co v Rahain*, 204 Mich App 355, 359; 514 NW2d 257 (1994).

---

[1] Plaintiff's failure to appear at this conference resulted in the entry of the default.

Plaintiff was properly served under MCR 2.107(C)(3) with a copy of the order providing that plaintiff would be defaulted if it should fail to appear at the pretrial conference. Further, plaintiff failed to present evidence sufficient to overcome the presumption that the order, properly mailed, was received. Therefore, plaintiff failed to establish good cause for its failure to appear at the hearing. The trial court did not abuse its discretion in denying plaintiff's motion to set aside the default judgment.

Next, plaintiff asserts that the trial court erred in awarding $2,352,012.97 in damages.[2] Defendants had the burden of proving their damages with reasonable certainty. *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997). "Although damages based on speculation or conjecture are not recoverable, damages are not speculative merely because they cannot be ascertained with mathematical precision." *Id.* (citation omitted). It is sufficient if there exists a reasonable basis for computation, even if the result is only proximate. *Id.* "In order to recover prospective profits, a plaintiff must establish proof of lost profits with a reasonable degree of certainty." *Joerger v Gordon Food Service, Inc*, 224 Mich App 167; 568 NW2d 365 (1997). In general, we review a trial court's award. of damages for clear error. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 177; 530 NW2d 772 (1995).

While there was sufficient evidence to support the trial court's award of money damages for an outstanding line of credit, lost inventory, and exemplary damages,[3] we conclude

---

[2] Although plaintiff did not raise an argument below with regard to the award of damages, we conclude that we may nonetheless review this issue on appeal under MCR 2.517(A)(7), which states that "[n]o exception need be taken to a finding or decision" by the trial court."

[3] Contrary to plaintiff's argument, *Birkenshaw v Detroit*, 110 Mich App 500, 511; 313 NW2d 334 (1981), does not state that explicit evidence of damaged feelings or some other indignity or humiliation must be

that there was insufficient evidence to support the award of $1,000,000 in lost profits. An officer of defendant stated that the figure of $1,000,000 was an "extrapolation of a lot of facts based upon scenarios[.]" He further stated during his testimony that plaintiff's fraud and bad faith were "worth some kind of damage to us." We conclude that the evidence regarding lost profits was simply too amorphous and therefore vacate this portion of the award of damages.

---

present before a court can make an award of exemplary damages. The Court in *Birkenshaw* simply found that the "exemplary" damages awarded by the trial court in that case were, in actuality, disallowed "punitive" damages because of the wording of the trial court's findings and because there was no evidence in the case of hurt feelings or another indignity or humiliation. *Id.* Here, the trial court mentioned the fraud perpetrated by plaintiff. It further mentioned that plaintiff "solicited a large order from [defendants] knowing it would be out of business shortly thereafter." The court stated that it would award exemplary damages because of the "willful[,] wanton and outrageous conduct[]" by plaintiff. In their motion for entry of judgment, defendants Kotz and Wysocki, in seeking exemplary damages, claimed that plaintiff's conduct resulted in "humiliation, outrage, business defamation and indignation." Under the totality of the circumstances of this case, including the reasonable inferences that can be made based on plaintiff's conduct, we find no grounds on which to vacate the trial court's award of exemplary damages. We acknowledge that in *Sullivan Industries, Inc v Double Seal Glass Co, Inc*, 192 Mich App 333, 351; 480 NW2d 623 (1991), the Court stated that "[i]n Michigan, the general rule is that exemplary damages are not available in an action for breach of a commercial contract." The Court then stated that "[a]n exception exists where there is proof of toritous conduct independent of the breach." *Id.* Here, the fraud alleged in the countercomplaint and mentioned by the trial court was sufficiently independent of the breach of contract such that exemplary damages were appropriate. We further note that plaintiff's attempt to challenge some of defendants' evidence based on a lack of foundation is untenable because the issue is unpreserved (plaintiff did not attend the hearing and therefore did not object to the evidence in question). We conclude that an evidentiary challenge such as this is the type of alleged error that requires preservation in order to be reviewed on appeal.

Finally, plaintiff asserts that the case should be assigned to a different judge on remand. Because this Court affirms the default judgment with the exception of the award of $1,000,000 in lost profits, we need not address the issue.

Affirmed in part and reversed in part.

/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

[March 18, 2004]

No. 242455
Oakland Circuit Court
LC No. 00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
Plaintiff/Counterdefendant-Appellant,

v.

AMERICAN KEYBOARD PRODUCTS, INC.,
ROBERT C. KOTZ and GREGORY WYSOCKI,
Defendants/Counterplaintiffs-Appellees.

Before: Fort Hood, P.J., and Bandstra and Meter, JJ.

BANDSTRA, J. (concurring in part and dissenting in part).

I concur with the majority opinion except in its affirmation of the exemplary damages award. Exemplary damages are only compensatory in nature and there must be evidence .of "humiliation, sense of outrage, and indignity, resulting from injustices maliciously, willfully, and wantonly inflicted." *McPeak v McPeak (On Remand)*, 233 Mich App 483, 490; 593 NW2d 180 (1999). Sufficient evidence of this nature was not presented here.

/s/ Richard A. Bandstra

APPENDIX C

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

[Filed June 12, 2002]

Case No. 00-024354-CK
Hon. Wendy Potts

INTERCONTINENTAL ELECTRONICS, S.p.A.

vs.

AMERICAN KEYBOARD PRODUCTS, INC. *et al.*,

At a session of this Court in the City of Pontiac,
County of Oakland on June 12, 2002
Present: Honorable Wendy Potts

ORDER

This matter came before the Court on plaintiff, Intercontinental Electronics motion to set aside default judgment.

The following parties having appeared and argued the motion on June 12, 2002.

Christopher Cornall for American Keyboard
Kevin Breck for International Electronics

After hearing the argument of the above parties, considering the pleadings and applicable law and for the reasons stated on the record the motion is: Denied.

Approved as to form and content:

IT IS SO ORDERED,

/s/ WENDY POTTS
Hon. Wendy Potts

APPENDIX D

STATE OF MICHIGAN
IN THE SIXTH JUDICIAL CIRCUIT COURT
(OAKLAND COUNTY)

Case No. 00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.p.A.,
a foreign corporation,
Plaintiff/Counter-Defendant.

v.

AMERICAN KEYBOARD PRODUCTS, INC., a Michigan corporation, ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

MOTION TO SET ASIDE DEFAULT JUDGMENT
TAKEN BY VIDEO TAPE RECORDING

BEFORE The Honorable WENDY L. POTTS, *Circuit Judge.*

Pontiac, Michigan—Wednesday, June 12, 2002

APPEARANCES:

For the Plaintiff:
MR. KEVIN H. BRECK (P 43319)
255 S. Old Woodward Avenue, Fl. 3
Birmingham, MI 48009
(248) 988-5851

For the Defendants:
MR. CHRISTOPHER A. CORNWALL (P 42721)
400 Renaissance Center, Ste. 2555
Detroit, MI 48243
(313) 259-8300

TABLE OF CONTENTS

Page

WITNESSES:

None.

EXHIBITS:

None.

[3] Pontiac, Michigan
Wednesday, June 12, 2002 -
at 8:33 a.m.

THE CLERK: Calling docket number 3, case number 2000 024354-CK, Intercontinental versus American Keyboard.

MR. BRECK: Good morning, your Honor.

THE COURT: Good morning.

MR. BRECK: Kevin Breck on behalf of the plaintiff.

MR. CORNWALL: Good morning, your Honor.

THE COURT: Good morning.

MR. CORNWALL: Christopher-Cornwall on behalf of AKP, Kotz, and Wysocki.

THE COURT: If you would approach for a minute please.

(Conference at the bench—8:33 a.m.)

THE COURT: Hi—when I—how are you?

MR. CORNWALL: Good morning.

THE COURT: When I took this case, I didn't know Clark Hill was in the case. They weren't in the case.

MR. BRECK: They weren't until two weeks ago.

THE COURT: Okay, and I'm not keeping unless there's a waiver cases that they're in on. It's my [4] former firm and I've got a lot of old and very close friends that—you want me to stay in?

MR. BRECK: You know, I don't have any problem with it. Let me see if I can consult just quickly—

THE COURT: Yes.

MR. BRECK: —and then I'll just let you know.

THE COURT: Yes.

(Proceedings resume—8:33 a.m.)

THE COURT: We'll pass this for a moment.

(Court recessed—8:34 a.m.)

(Proceedings resume—8:34 a.m.)

THE CLERK: Recalling docket number 3, case number 2000 024354-CK, Intercontinental versus American Keyboard.

MR. BRECK: Good morning, your Honor.

THE COURT: Good morning.

MR. BRECK: Kevin Breck on behalf of the plaintiff and counter-defendant. This is our motion asking the Court to set aside the Default Judgment that was entered in mid-May.

Your Honor, we have to show you two things. One is good cause. The other is a meritorious defense. With regard to good cause, looking at the pleadings and looking at the caption, it would appear that this [5] case was brought on behalf of Intercontinental. In truth, Intercontinental had no interest in the litigation.

THE COURT: Did they ever see a pleading that had their name on it?

MR. BRECK: They saw—they received the notices, your Honor, that the counter-plaintiff has attached. This was long after the case began.

THE COURT: Did they know there was a counter-claim?

MR. BRECK: They did not know that there was a Counter-Claim until the notice for the hearing in May was sent and they for the first time contacted their outside counsel who is English speaking and who understood what had been going on for the last year.

THE COURT: So in other words, when this other firm entered an appearance on their behalf and answered the Counter-Claim that firm had no authority to answer the Counter-Claim. They never talked to their client.

MR. BRECK: That's apparently true, your Honor. The client was—the client was Euler which is the—an Italian insurance company. Intercontinental was paid the amount—

[6] THE COURT: Right.

MR. BRECK:—that it claimed owed that preceded this lawsuit and then turned their right to sue over to Euler and Euler proceeded on.

Now should this caption had been captioned differently? I think so. I think Euler should have been the plaintiff. There should have been some indication that Euler was the real party in interest, but the truth of the matter was it wasn't, but it wasn't as a result of anything—any wrongdoing on the part of Intercontinental. Intercontinental simply did not understand what was going on until May of this year when it received the notice of the hearing of the most recent motion which was resulted in the Court entering the order for the monetary amount of the Judgment.

And the reason for that, your Honor, is because they were relying on Euler. When they were—when they received-they Intercontinental and Intercontinental received documents, which it did, it forwarded them to Euler, asked for advice on what it should be doing, if anything, and Euler's advice invariably was do nothing, and that included even the most recent notice—or strike—when in September of last year when [7] it received the Order for Default Judgment. It sent that Order to Euler. It said what do we do. Euler's response was don't do anything. Case has been dismissed.

Now since Intercontinental had no interest in this suit anyway—

THE COURT: Even when there was a Counter-Claim.

MR. BRECK: It didn't know of the Counter-Claim. To the best of my knowledge, your Honor, Intercontinental was never served with the Counter-Claim. It did not understand until May of this year there was a Counter-Claim.

THE COURT: Isn't the—Mr. Breck, isn't the real dispute with an attorney who would come in, who would file an answer to a Counter-Claim, allow a Default and a Default Judgment for $2,000,000 to be entered? Actually, they got out at some point saying they didn't have communication.

MR. BRECK: It was—the attorney was out.

THE COURT: But there was a Counter-Claim filed and it seems to me that the problem is with the attorney here. If the attorney didn't say there's a Counter-Claim or didn't—didn't give him notice or kept telling him don't worry about it, who—who—I—I [8] fail to see here if that is the case, but I don't really have any affidavit do I saying they never received the Counter-Claim?

MR. BRECK: Your Honor, your analysis assumes that there was communication between the attorney here and Intercontinental.

THE COURT: Right.

MR. BRECK: And according to the affidavit that we submitted by the president of Intercontinental there was no such communication. He never spoke to the attorney here.

THE COURT: Okay.

MR. BRECK: There simply was no communication. The communication, if there was any, had to have been between the attorney and Euler and clearly there are issues between Euler and Intercontinental. I don't know that there are issues between Intercontinental and the attorney because there wasn't a relationship.

THE COURT: Well they entered—they answered the Counter-Claim on their behalf.

MR. BRECK: I understand—

THE COURT: So I think there's something to talk about with an attorney who would enter a Counter-Claim and answer the Counter-Claim on their behalf. Let me [9] hear from the defendants. Why did I enter a Default in this case?

MR. CORNWALL: You entered a Default for—well you entered a Default in this case for after Mr. Roosen withdrew we entered an order that required Intercontinental to obtain substitute counsel within 30 days, and the Order specifically said the copy of the notices would be sent to Intercontinental. Intercontinental had 30 days to get counsel, and at that time the Court may enter a Default Judgment, and then the Court also indicated that there was a pre-trial conference another 20 days or 18 to 20 days after that in which the order said well if they don't—if they don't get it within 30 days, you may enter a Default. If they don't show up at the pre-trial conference, then you shall enter a Default, and the—and their claim would be dismissed.

I showed up after 30 days. This Court said well let's wait until the pre-trial conference. I showed up at the pre-trial conference. No attorney had appeared and the Default was entered at that time. A copy of the Default was sent to the address. It was sent to Intercontinental. Their brief acknowledges that they received it in September yet did nothing.

[10] Now, Your Honor, I've been here from the very beginning. This Court's fully aware of the history and the careful procedural safeguards that were taken in—in entering this Default. In reading their motion, I'm—I'm extremely surprised . . . two things principally.

One, this claim that it was a subrogation action. Your Honor, Intercontinental brought this suit. We did not bring

the suit initially. They came in to your court. They filed the lawsuit. Intercontinental is the party. It was not in the name of any insurance company as a subroger or subrogee or any type of a claim. At no time at all in my dealings with Mr. Roosen was there ever mention that this was a subrogation claim. Mr. Roosen told me in our conversations he was negotiating on behalf of Intercontinental. He filed a claim on behalf of Intercontinental. He answered the Counter-Complaint on behalf of Intercontinental, and he was negotiating attempts to get rid of the case on behalf of Intercontinental. He offered settlement negotiations to drop—we'll drop our Complaint if you drop the Counter-Complaint. He made into—he made no statements to me that it's really—I should take that [11] deal 'cause it's really futile to go against him. They're an offshore company. They're judgment proof.

He certainly knew about Intercontinental. He was acting on behalf of Intercontinental, and at no time did I have any understanding or belief differently. If you look attached 'to Intercontinental's brief, Exhibit C indicates that they did have notice of—that a Counter-Claim was pending or was potentially going to be filed, and the Count—and Mr. Roosen was looking for information on defending the Counter-Claim and indicated that if—if the debtor, meaning AKP, prevails and files a Counter-Claim, the attorney is going to request a retainer in defense to defend the Counter-Claim against which he will bill on an hourly basis.

Intercontinental, your Honor, had notice. They had notice when they sued—sued my clients. They had notice when we filed a motion to file a Counter-Claim, and they had—and they answered the Counter-Claim and they defended the action and it was only then after that that Mr. Roosen withdrew.

The second point I was extremely surprised about—well—and if we go into noticeably absent in this whole thing as the Court's addressed is the affidavit [12] of Mr. Roosen if—as

to defending or who he actually represented, and the fact is that he represented Intercontinental.

Second point that I was extremely surprised is that Intercontinental's claim here that they're an unsophisticated Italian company that don't know—don't know much about the American jurisprudence. This is a company that conducted its entire dealings with my client in English. The distributorship agreements and the agreements between-these parties were entirely in English. Mr. Roosen was retained through a Chicago law firm. Clark Hill was retained or contacted by that same Chicago law firm. This is a company that is unsophisticated in American jurisprudence, but when they finally got the Default Judgment, they contacted counsel within 24 hours and the next day after this Default Judgment—or the amount was entered by this Court, I had a telephone call from Clark Hill saying that they had been contacted the night before and were looking into appearing on this case.

If you look through the brief of Intercontinental, it's full of inconsistencies. They say they don't have notice. Then they have notice. We had no idea what was going on but we were relying [13] on the insurance company to protect our interest. We had no idea about American counsel but American counsel we thought was protecting our interest. We were told not to worry about it. They knew that there was litigation. They constantly were being sought information to support and defend the litigation yet now they claim we don't know. We have no idea what was going on. They received the Default Judgment in September and did absolutely nothing until the Default Judgment amount was entered and then they immediately reacted.

They have to establish two things . . . no good cause—or that good cause exists and manifest injustice. There is no good cause. There has not been a procedural defect in this case. In fact, we've bent over backwards and this Court has

bent over backwards in order to make sure that their interests were protected. You didn't default them after 30 days. You waited until two events happened. When we showed up here for Default Judgments, we—instead of going on the record immediately you waited for a period of time so counsel could appear. When we sent notice, rather than giving one week's notice we gave a couple weeks notice. Everything was followed by the [14] book and there's absolutely no indication here and certainly no good cause to set aside the Default Judgment.

And then lastly there hasn't been a meritorious defense, at least when I read the brief. I am not aware of any meritorious defense. Instead, they make one indication that Mr. Love's affidavit is hearsay but Mr. Love's affidavit had nothing to do with the entry of the Default Judgment. That was governed by the order that this Court entered, and the amount of proofs were put on by Mr. Wysocki and some schedules that were attached. Nothing has been indicated by Intercontinental to attack any of those proofs.

Your Honor, in—in summary, this is a case that Intercontinental filed in your court. They responded to the Counter-Claim. They're held to they had knowledge, they had notice, they received all the notices. Mr. Roosen represented he represented Intercontinental. When he withdrew, all notices were to be sent to Intercontinental at their address. All notices were sent to Intercontinental. They received them all. They're even receiving $75 case evaluation fees which they kept forwarding on.

Your Honor, there's no doubt they had notice. [15] The Default Judgment and the Judgment amount should remain.

THE COURT: Mr. Breck.

MR. BRECK: Two points, your Honor. Intercontinental's conduct is certainly consistent with the position that they maintain that they didn't understand the import of what they

were getting because they didn't have an interest in this. They had assigned their right to litigate to Euler and—and—and that's the only way frankly that their conduct makes any sense. Why else would they ignore a Notice of Default Judgment that had been entered because when they sent it to Euler, Euler responded, and it's Exhibit K to my brief, by saying don't worry about it. The case has been dismissed. No—there's no other rational explanation for why they would act the way they acted.

The second point is that it's simply inequitable to hand American Keyboard—a multi-million dollar judgment without requiring them to prove up their case. Give Intercontinental an opportunity to put on a defense. If their case is as good as they believe it is, they'll win it on summary judgment. There's no prejudice to them. They waited six months, give or [16] take, to come in to finalize the Judgment. Why, I don't know, but they—but they chose to do that. So the—so the time pressure—excuse me—the time delay shouldn't act against my client.

THE COURT: Okay.

MR. BRECK: Thank you your Honor.

THE COURT: Matter is before the Court on a Motion to Set Aside Default Judgment that was entered in this court on May 15, 2002. Intercontinental invoked the jurisdiction of this court by filing a Complaint July 6th of 2000. Then an Amended Complaint again was filed in their name July 18th of 2000. Defendants appeared, brought a motion to file a Counter-Claim which was then filed and answered by the same attorney that had filed the initial Complaint.

Ultimately, the plaintiff's counsel on June 27th of 2001 filed a Motion to Withdraw stating that counsel repeatedly attempted to obtain plaintiff's cooperation but was unable to do so. The case proceeded, and on July 18th of 2001, this Court permitted counsel to withdraw specifically providing

that plaintiff/counter-defendant immediate notice—get immediate notice of the order and that plaintiff have 30 days to get substitute counsel and file an [17] appearance or the Complaint may be dismissed with prejudice and default entered, and then the order provided for a pre-trial conference on August 28' of 2001 again stating in the order that failure of the plaintiff, its representative to appear, would result in dismissal and a Default Judgment.

And on August 28, 2001, the Court did enter an order dismissing the Complaint without prejudice and an Order for a Default Judgment for failure of anybody to appear and pursue the case, and ultimately on May 15th I entered the—the Judgment amount after proofs in open court.

The Court hasn't been presented with any affidavits that have stated that the plaintiff/counter-defendant was not aware of the Counter-Complaint. Rather, the defense appears to be that Intercontinental was not the real party in interest here and simply was told by real party in interest that it didn't have to do anything, and as also presented what—I'm going to assume that there's a meritorious defense that has been presented.

So I'm looking at the good cause and I think that there were numerous attempts by this Court to get the attention of Intercontinental and it's not up to this [18] court to determine who is the real party in interest but simply to see that notices are given to—to the plaintiff and to the counter-defendant. I think it was given. It was adequate, and I think that the explanations that have given—been given today although they have some—I recognize there may be some merit to it—certainly do not overcome the numerous notices and attempts to get the attention of Intercontinental that they had—were about to have a judgment entered against it, and in fact, the—it speaks a lot that immediately upon hearing the Judgment

they finally woke up and found a way to appear in this court and hire experienced counsel to come in here and try to set it aside.

So I haven't heard the good cause shown and the Judgment will stand.

MR. CORNWALL: Thank you, your Honor.

THE COURT: Thank you.

MR. CORNWALL: We'll submit an order.

THE COURT: Or you can use one of my form orders right there if you wish.

MR. CORNWALL: I would prefer to do that then.

THE COURT: All right.

MR. CORNWALL: Thank you.

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

I certify that this transcript, consisting of 19 pages, is a complete, true and correct transcript of the proceedings and testimony taken in this case on Friday, June 11, 1999. Some names and cases may be phonetically spelled.

August 13, 2002 /s/ Fara Duffey
FARA DUFFER, CER 0904
Livingston-Oakland Court Reporting
11768 Pine Mountain
Brighto, MI 48114

APPENDIX E

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

Case No. 00-024354-CK
Hon. Wendy L. Potts

INTERCONTINENTAL ELECTRONICS, S.p.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

Michael J. Sullivan (P37137)
Brian M. Ziff (P58124)
Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226-3435
(313) 965-8300
Attorneys for Plaintiff/Counter-Defendant

Christopher A. Cornwall (P42721)
Edward R. Boucher (P57251)
Kotz, Sangster, Wysocki and Berg, P.C.
400 Renaissance Center, Suite 2555
Detroit, Michigan 48243
(313) 259-8300
Attorneys for Defendants/Counter-Plaintiffs

MOTION TO SET ASIDE DEFAULT JUDGMENT

Plaintiff/Counter-Defendant Intercontinental _Electronics, S.p.A. ("Intercontinental"), through its attorneys Clark Hill PLC, submits its Motion to Set Aside Default Judgment. In support of its Motion, Intercontinental relies upon the accompanying Brief in Support and MCR 2.603(D).

Respectfully submitted,

CLARK HILL PLC

By: /s/ Michael J. Sullivan
MICHAEL J. SULLIVAN (P37137)
BRIAN M. ZIFF (P58124)
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226-3435
(313) 965-8300
Attorneys for Intercontinental Electronics, S.p.A.

Date: June 5, 2002

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

Case No. 00-024354-CK
Hon. Wendy L. Potts

INTERCONTINENTAL ELECTRONICS, S.p.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

Michael J. Sullivan (P37137)
Brian M. Ziff (P58124)
Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226-3435
(313) 965-8300
Attorneys for Plaintiff/Counter-Defendant

Christopher A. Cornwall (P42721)
Edward R. Boucher (P57251)
Kotz, Sangster, Wysocki and Berg, P.C.
400 Renaissance Center, Suite 2555
Detroit, Michigan 48243
(313) 259-8300
Attorneys for Defendants/Counter-Plaintiffs

BRIEF IN SUPPORT OF MOTION TO SET ASIDE DEFAULT JUDGMENT

Introduction

Plaintiff/Counter-Defendant Intercontinental Electronics, S.p.A ("Intercontinental") moves this Court to set aside the May 15, 2002 default judgment (the "Default") entered against Intercontinental. Intercontinental, an Italian corporation, and Defendants American Keyboard Products, Inc. ("AKP"), Robert C. Kotz, and Gregory Wysocki (collectively, "Defendants"), entered into a distribution contract. Ultimately, Defendants breached that contract by failing to pay Intercontinental. Under a unique feature of Italian law, Intercontinental's insurer paid Intercontinental the amount then owed to it by Defendants, making Intercontinental whole and eliminating Intercontinental's interest in suing Defendants. But the insurer then retained a Michigan law firm that instituted a breach of contract action, in Intercontinental's name, against Defendants to collect the money the insurance company paid to Intercontinental. From that point forward, Intercontinental had little or no knowledge of the events in this case.

Perhaps most importantly, Intercontinental, because it was truly not a party to the action, had no instruction to appear at the Court's July 18, 2001 pretrial conference. When Intercontinental did not appear, counsel retained by the insurance company withdrew and the Court set another conference for August 28, 2001. Intercontinental did not receive notice of its purported counsel's withdrawal or the August 28 conference. As a result, the Court defaulted Intercontinental. Once Intercontinental finally received some documents relating to this case in the fall of 2001 and sought an explanation of their significance, if any, to Intercontinental, the insurance company instructed Intercontinental to take no action. Intercontinental did not receive any more information about this case until the day before the Court entered a default judgment

against Intercontinental. By that time, and through no fault of its own, it was far too late for Intercontinental to protect its rights.

Thus, Intercontinental now asks the Court to set aside the default judgment. Simply stated, it would be manifestly unfair for Intercontinental to be burdened with a significant judgment against it when Intercontinental had no opportunity to defend itself because of the neglect of its insurance company and its prior Michigan counsel.

Statement of Facts

Among other things, Intercontinental exports electronic pianos for sale in the United States. *See Exhibit 1 at ¶ 3, Affidavit of Mauro Galanti.* Intercontinental was established as a wholly independent corporation to Viscount Marketing International S.r.l. ("Viscount") and Titan Music S.A. ("Titan"), respectively the export wholesaler and manufacturer of the electronic pianos sold by Intercontinental. *Id.* Intercontinental, in turn, established a contractual relationship (the "Agreement") with AKP. *Id at* ¶ 4. Under the Agreement, AKP agreed to act as the representative and distributor of Viscount and Titan products exported by Intercontinental for sale in the U.S. and Canada. *Id.* Kotz and Wysocki were two of AKP's principals. *Id.*

Until approximately 1996, Intercontinental and AKP transacted business pursuant to the Agreement. *Id at ¶ 5.* But in 1996, AKP began to fall seriously behind in satisfying its debts owed to Intercontinental. *Id.* As a result of AKP's failure to pay for products shipped to it by Intercontinental, and other breaches and/or non-performance of the Agreement, Intercontinental ceased shipping products to AKP and demanded payment of all past due amounts owed by AKP to Intercontinental. *Id at ¶ 6.* As of the date on which Intercontinental ceased the export and sale of products to AKP, AKP owed Intercontinental more than $85,000. *Id.* Inter-

continental memorialized this debt in a September 5, 1996 letter to Wysocki. *Id at ¶ 7; see also Exhibit 1, Internal Exhibit A.* Incorporated into this letter was an unlimited guaranty proposal that constituted AKP's suggested resolution and satisfaction of its debt. *Exhibit 1 at ¶ 8; see also Exhibit 1, Internal Exhibit A.*

AKP eventually stopped making its required payments. *Id at ¶ 8.* Despite repeated demands and negotiations to resolve the unpaid debt, AKP refused and/or was otherwise unable to pay the debt. *Id.*

As a result of AKP's debt to Intercontinental, Intercontinental submitted a claim to EULER-SIAC Societa Italiana Assicurazione Crediti S.p.A., ("EULER"), Interco' ntinental's insurer. *Id at ¶ 10.* Upon information and belief EULER, is a quasi-governmental insurance company that provides coverage to Italian business for foreign (non-Italian) debt. *Id.* Pursuant to Intercontinental's claim, EULER paid Intercontinental the full amount of Intercontinental's unpaid debt. *Id.*

As a condition of its insurance coverage and subsequent pay-out, EULER acceded to the subrogation rights with respect to the debt owed by AKP to Intercontinental. *Id at ¶ 11.* Intercontinental believed that those subrogation rights included the right of EULER to assign its subrogation claims and prosecute a collection action against AKP in the name of Intercontinental. *Id.*

Upon information and belief, EULER and/or its U.S. representative retained the Michigan law firm of Kahn Kahn Gibson & Roosen ("KKG&R"), by Richard G. Roosen ("Roosen"), to initiate the foregoing subrogated debt collection action ("Collection Action") in July 2000. *Id at ¶ 12.* Indeed, on February 29, 2000, Roosen recommended that EULER file the Collection Action. *Id; see also Exhibit I at Internal Exhibit B.*

The Collection Action was always directed and/or prosecuted by EULER, and/or KKG&R, and/or Roosen. *Exhibit 1 at ¶ 13.* Periodically, Intercontinental was asked to provide information, data, or comment to EULER regarding the facts of the Collection Action. *Id.* But Intercontinental relied upon EULER, KKG&R and Roosen to (i) protect Intercontinental's interests in the Collection Action, (ii) advise Intercontinental of any significant obligations or developments arising in or out of the Collection Action, and (iii) take all steps necessary to protect Intercontinental's interests in relations to the Collection Action. *Id.* This was particularly true because Intercontinental was obligated to allow EULER to sue in its name as subrogor, despite the fact that Intercontinental had been made whole for AKP's bad debt, and, therefore, had no independent reason or interest in participating in the Collection Action. *Id.*

On the few occasions when materials relating to the Collection Action were sent directly to Intercontinental, they were forwarded to EULER with a request for an explanation of what the materials were and their significance to Intercontinental, if any. *Id at ¶ 14.* At all times, Intercontinental relied upon EULER, KKG&R; and Roosen to fully advise Intercontinental as to the impact, if any, of the Collection Action upon Intercontinental. *Id.*

Despite this reliance, at no time was Intercontinental advised in any meaningful form that AKP had filed a counterclaim in the Collection Action. *Id at ¶ 15.* As of March 31, 2001, EULER advised Intercontinental that AKP was considering filing a counterclaim and that KKG&R would defend the counterclaim and "bill on an hourly basis" after receiving a "retainer." *Id; see also Exhibit 1 at Internal Exhibit C.* Intercontinental was never asked for a retainer or provided with an hourly-basis bill. *Exhibit 1 at ¶ 15.* In fact, until speaking with U.S. counsel after receiving the Default, Intercontinental did not know what a counterclaim was in a

U.S. legal proceeding. *Id.* Intercontinental demonstrated its lack of knowledge of the U.S. legal system in an April 3, 2001 letter to EULER by stating, "With reference to the aforesaid complaint, we do not comment the legal procedures (dates, answers etc.) as we do not know anything about." *See Exhibit 1 at Internal Exhibit D.* In other words, Intercontinental did not understand the significance of a counterclaim, and was unaware of both AKP's filing of its counterclaim and the fact that Intercontinental was not being represented such an action. *Exhibit 1 at ¶ 15.*

Between April 9 and August 28, 2001, Intercontinental received only a *single* letter regarding the Collection Action from EULER, and did not receive *any* such documents from KKG&R or Roosen. *Id at ¶ 16; see also Exhibit 1 at Internal Exhibit E.*

On or about August 29, 2001, Intercontinental received a $75 bill from the Circuit Court for the Sixth Judicial Circuit of Michigan relating to case evaluation fees. *Id at ¶* 17; *see also Exhibit 1 at Internal Exhibit F.* Intercontinental immediately sent the bill to EULER and asked for an explanation. Id. On September 12, 2001, EULER advised Intercontinental that it had asked for an explanation of the bill from U.S. counsel and would respond to Intercontinental's inquiry when EULER received a response. *Id at ¶ 18; see also Exhibit 1 at Internal Exhibit G.*

On September 13, 2001, Intercontinental faxed EULER a copy of the order of default and order dismissing the Collection Action and a requested an explanation of those documents. *Id at ¶ 19; see also Exhibit 1 at Internal Exhibit H.*

On September 14, 2001, EULER advised Intercontinental that the bill was a simple administrative cost and that the Collection Action was terminated on September 13, 2001. *Id at ¶ 20; see also Exhibit 1 at Internal Exhibit I.* While the Court's August 2S, 2001 order was attached to EULER's

letter, no discussion of the impact of the default was included. *Id.*

On or about October 16, 2001, Intercontinental received via U.S. Registered Mail an additional copy of the default order. *Id at ¶ 21; see also Exhibit 1 at Internal Exhibit I.* Intercontinental immediately faxed a copy of that document to EULER with a request that EULER explain to Intercontinental what was taking place in the U.S. litigation. *Id.*

On October 25, 2001, EULER responded to Intercontinental by stating, "After receiving the attachment documents, it is recommended they be ignored since the case was dismissed and no further action was being taken." *Exhibit 1 at ¶ 22; see also Exhibit 1 at Internal Exhibit K.* On November 9, 2001, EULER again advised Intercontinental that the Collection Action had been concluded. *Id at ¶ 23; see also Exhibit 1 at Internal Exhibit I.* Intercontinental did not receive any further information about this case until May 14, 2002, when it received, via U.S. Registered Mail, a copy of Defendants' motion for entry of the Default indicating a hearing date of May 15, 1902 [sic] at 8:30 a.m. *Id at ¶ 24; see also Exhibit 1 at Internal Exhibit M.*

Since May 14, Intercontinental has diligently investigated the Collection Action. *Exhibit 1 at ¶ 24.* With respect to the Defendants' allegations, Intercontinental neither committed fraud nor fraudulently induced any activity or forbearance by AKP, Kotz and/or Wysocki. *Id at ¶ 25(a).* Moreover, Intercontinental did not engage in any activity(ies) alleged by AKP, Kotz and/or Wysocki to be fraudulent, tortious and/or defamatory. *Id at ¶ 25(b).* In fact, as memorialized in Exhibit A to Mr. Galanti's Affidavit, by the time the relationship between Intercontinental and Defendants ended, it was Intercontinental that was owed money by AKP. *Id at ¶ 26.*

Further, and in direct contradiction to the Affidavit of Mark Love submitted in support of the Default, AKP's principals

volunteered to execute personal guaranties in order to-retire outstanding debt and induce the continued participation of Intercontinental in their business relationship. *Id at ¶ 27.* And as noted in Defendants' motion for entry of the Default, AKP voluntarily expended capital to establish a sales and distribution network. *Id at ¶ 28.* The principals of AKP developed its business and marketing plans independent of Intercontinental. *Id.* To the extent that AKP undertook excessive debt, and or contracted for shipments that it could not pay for, such activities were not undertaken at the direction of Intercontinental. *Id.*

Argument

A. Intercontinental Can Demonstrate Good Cause And A Meritorious Defense Sufficient To Set Aside The Default Judgment.

In Michigan, a default and default judgment shall be set aside upon a showing of (i) good cause and (ii) a meritorious defense to the underlying claim. Specifically, MCR 2.603(D)(1) reads in pertinent part:

> (D) Setting Aside Default.
>
> (1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

MCR 2.603(D)(l).

As set forth below, Intercontinental has good cause to have the default judgment entered against it set aside. Moreover, Intercontinental asserts below and in the attached Affidavit several meritorious defenses to the underlying claims. *See Exhibit I.*

1. Good Cause.

In Michigan, "good cause" to have a default or default judgment set aside is either (i) a substantial defect or irregularity in the proceedings upon which the default was based; (ii) a reasonable excuse for failure to comply with the requirements that created the default; or (iii) some other reason showing that manifest injustice would result from permitting the default to stand. *See Marposs Corp v Autocam Corp*, 183 Mich App 166, 171; 454 NW2d 194 (1990), *Reed v Walsh*, 170 Mich App 61, 64; 427 NW2d 588 (1988); *Mason v Marsa*, 141 Mich App 38, 41; 366 NW2d 74 (1985). Intercontinental is entitled to have the default set aside under at least two of these criteria.

First, as discussed in detail above, a substantial defect or irregularity in the proceedings upon which the default was based exists here, namely that Intercontinental received no information about the status of the case at all relevant times. For example, Intercontinental had no notice of the July 18, 2001 pretrial conference, the withdrawal of counsel purportedly representing Intercontinental, the August 28, 2001 pretrial conference, or the Orders generated from both hearings, including August 28, 2001 Order for Default. *See Exhibit I.* Indeed, Intercontinental did not even receive notice of Defendants' motion for entry of the Default until the *day before* the hearing. Given Intercontinental's location in Italy and the fact that Roosen had withdrawn from the case on July 18, 2001, Intercontinental had insufficient notice of the proceedings and absolutely no opportunity to be heard. In the presence of such a glaring defect, the default should be set aside.

Second, manifest injustice would result from permitting the default to stand. Under the vagaries of the Italian legal system, Intercontinental was made wh[illegible] its breach of contract claim by EULER, its quasi-governmental insurance company that provides coverage to Italian business for

foreign (non-Italian) debt. From that moment forward, EULER and its U.S. counsel, Roosen, undertook the responsibility to inform Intercontinental of the progress of the Collection Action. They failed to do so. Neither EULER nor Roosen informed Intercontinental that Defendants had filed a counterclaim, the meaning and importance of that counterclaim, or the necessity, if any, of appearing before this Court. Indeed, Roosen ultimately withdrew from the case, but Intercontinental did not receive any notice of his withdrawal. Now that Intercontinental is fully informed about the status of the case, Intercontinental stands ready to defend itself against Defendants' counterclaim. In light of the complete failure of EULER, Roosen, and KKG&R to inform Intercontinental of the claims against it, manifest injustice would result if the Default is allowed to stand.

2. Meritorious Defenses.

Intercontinental also is entitled to have the default set aside so that the issue of its liability can be decided on the merits of the case and not on a "hypertechnical construction of the court rules" as such "would not result in a just determination of this action." *Marposs*, 183 Mich App at 170. As that court succinctly explained, "[the policy of this state favors the meritorious determination of issues and encourages the setting aside of defaults." *Id.* In this case, Intercontinental has several meritorious defenses to Defendants' counterclaim.

First, Defendants' motion for entry of the Default was principally supported by the Affidavit of Mark Love. *See Exhibit 2.* Mr. Love's affidavit is replete with hearsay attributable to an individual, Sergio Bianchi, who Mr. Love claims was a "high level executive" Titan and Intercontinental. Such inadmissible evidence cannot be used to support a default judgment. *See, e.g, Brown v Rosedale Nurseries, Inc*, 259 AD2d 256; 686 NYS2d 22 (1999)

(hearsay statements insufficient to support entry of default judgment) (Exhibit 3). On this ground alone, the Default should be set aside.

Second, as noted above, Mr. Love avers that Mr. Bianchi was a key witness and employee of Titan. Mr. Galanti confirms that at all relevant times, Mr. Bianchi was an employee of Titan, not Intercontinental. *See Exhibit I at ¶ 30.* In other words, according to Mr. Love, Titan is responsible, at least to some degree, for the damages Defendants claim to have incurred. As such, Titan is an indispensable party. But Defendants failed to make Titan a party to the case. Under Michigan law, a default judgment can not be sustained absent an indispensable party. *Accord* MCR 2.205 (persons whose presence in action is "essential to permit the court to render complete relief must be made parties").

In light of Intercontinental's meritorious defenses, the Default should be set aside. *Accord Equico Lessors, Inc v Original Buscemi's, Inc*, 140 Mich App 532; 364 NW2d 373 (1985) (courts should be extraordinarily cautious in granting default judgments as sanction).

B. Intercontinental Has Not Delayed.

Intercontinental has not been dilatory in its efforts to set aside the default. Counsel for Intercontinental received notice of these proceedings on May 14 and acted swiftly thereafter. Counsel confirmed with the Court that the default had been entered. Intercontinental's counsel then contacted AKP's counsel to discuss the nature of the parties' dispute and seek concurrence in the instant Motion. AKP's counsel denied his concurrence. Intercontinental filed its Motion seeking the first available date for a hearing. Courts have viewed such actions as further grounds to set aside defaults. *See, e.g., Reed*, 170 Mich App at 66 (setting aside default where, *inter alia*, the defendant did not delay following entry of the default). The result should not differ in this case.

Conclusion

The Default provides an enormous windfall to Defendants. This case began as a collection action in the amount of approximately $80,000. It is simply unjust for it to end in a $2.4 million judgment against Intercontinental when Intercontinental had no knowledge of the merits of the case or ability to defend itself. Accordingly, Plaintiff/Counter-Defendant Intercontinental Electronics, S.p.A. respectfully requests that this Court enter an Order (i) setting aside the default and default judgment entered against Intercontinental in this case, and (ii) granting such other and further relief as is fair and reasonable under the circumstances.

Respectfully submitted,

CLARK HILL PLC

By: /s/ Michael J. Sullivan
Michael J. Sullivan (P37137)
Brian M. Ziff (P58124)
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226-3435
(313) 965-8300

Attorneys for Intercontinental Electronics, S.p.A.

Date: June 5, 2002

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK
Judge Wendy L. Potts

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally
Defendants/Counter-Plaintiffs.

AFFIDAVIT

I, Mauro Galanti, depose and state that if called to testify in the captioned matter, I could competently testify as follows:

1. I am over 18 years old and the President of Intercontinental Electronics S.p.A. ("Intercontinental"), a position I have held for approximately the last 2 years. Prior to that time, my father was President of Intercontinental since the date of its creation. I assisted him in this regard until his death approximately 2 years ago.

2. I am an Italian citizen. I do not speak or read the English language to any significant or meaningful degree. I transact business in the Italian language, both in written and spoken form. Prior to this lawsuit, I have never been involved in a U.S. legal proceeding and am not familiar with such proceedings.

3. Intercontinental was created in November 1969, for the purposes of, among other things, exporting electronic pianos to the United States for retail sale there. Intercontinental was established as a wholly independent corporation to Viscount Marketing International S.r.l. ("Viscount") and Titan Music S.A. ("Titan"), the export wholesaler and. manufacturer, respectively, of the products to be on sold by Intercontinental.

4. Intercontinental, in turn, established a relationship with American Keyboard Products, Inc. ("AKB") wherein AKB agreed to act as a United States and Canadian representative and distributor of Viscount and Titan products exported to -the United States or Canada by Intercontinental (the "Distributor Agreement" or "Agreement"). Robert C. Kotz ("Kotz") and Gregory Wysocki ("Wysocki") were two of the principals of AKP with whom Intercontinental dealt in establishing the United States Distributor Agreement for Intercontinental.

5. From 1994 until approximately 1996, Intercontinental and AKP transacted business pursuant to the foregoing Agreement. However, beginning 1996 AKP began to fall seriously behind in satisfying debts owed by AKP to Intercontinental.

6. As a result of AKP's failure to pay for products shipped to it by Intercontinental, and other breaches and/or non-performance of the Distributor Agreement, Intercontinental ceased shipping products to AKP and demanded payment of all past due amounts owed by AKP to Intercontinental. As of approximately 1998 Intercontinental ceased the export and sale of products to AKP. At that time, AKP owed Intercontinental has owed more than US $85,000 by AKP.

7. The foregoing debt was memorialized in a September 5, 1996 correspondence ("Wysocki Letter") to Nicola

Fiordalisi, Intercontinental's U.S. counsel, from Gregory L. Wysocki, a principal of and attorney for AKP. See Exhibit A.

8. Incorporated into the Wysocki letter was an unlimited guaranty proposal that constituted AKP's suggested resolution and satisfaction of the debt owed by AKP to Intercontinental.

9. Payments pursuant to the foregoing guaranties and Agreement continued to 1998. At that time, payment of the debt owed by AKP to Intercontinental ceased. Despite repeated demands and negotiations to resolve the unpaid debt, AKP refused and/or was otherwise unable to pay the debt.

10. As a result of the foregoing bad debt, in 1999, Intercontinental submitted a claim to EULER-SIAC Societa Italiana Assicurazione Crediti S.p.A., ("EULER"), Intercontinental's insurer. Upon information and belief EULER is an insurance company that provides coverage to Italian business for bad foreign (non-Italian) contractual debt. Pursuant to Intercontinental's claim EULER made payment to Intercontinental pursuant to the policy insurance.

11. As a condition of its insurance coverage and subsequent pay-out, EULER acceded to the subrogation rights of Intercontinental with respect to the debt owed by AKP to Intercontinental. I believe that those subrogation rights included the right of EULER to assign its subrogation claims and to prosecute a collection action against AKP in the name of Intercontinental.

12. Upon information and belief, EULER and/or its U.S. representative, EULER-American Credit Indemnity (collectively "EULER"), retained the Michigan law firm of Kahn Kahn Gibson & Roosen ("KKG&R"), and Richard G. Roosen ("Roosen"), to. initiate the foregoing subrogated debt collection action ("Collection Action") in July 2000. Attached as Exhibit B is correspondence dated 29 February 2000 from Roosen to EULER indicating Roosen's recommendation that EULER file the Collection Action.

13. At all times the Collection Action was directed and/or prosecuted by EULER, and/or KKG&R and/or Roosen. Periodically, Intercontinental was asked to provide information, data or comment to EULER regarding- the facts of the Collection Action. Most of the communication between Intercontinental and EULER was in Italian. Intercontinental and I relied upon EULER and the U.S. attorneys EULER retained, KKG&R and Roosen, to protect the interests of Intercontinental in the Collection Action, advise Intercontinental of any significant obligations or developments arising in or out of the Collection Action and to all steps necessary to protect Intercontinental's interests in relations to the Collection Action. This was particularly true because Intercontinental was obligated to allow EULER to sue in its name as subrogor, despite the fact that Intercontinental had been made whole for AKP's bad debt, and, therefore, had no independent reason or interest in participating in the Collection Action.

14. On the few occasions when materials relating to the Collection Action were. sent directly to Intercontinental, they were forwarded to EULER with a request for an explanation of what the materials were and their significance, if any. At all times Intercontinental relied upon EULER and the U.S. attorneys it retained, KKG&R and Roosen, to advise- and fully and adequately provide such information. I was have never spoken or directly corresponded to KKG&R or Roosen.

15. At no time was Intercontinental advised in any meaningful form that AKP had filed a counterclaim in the Collection Action. Attached as Exhibit C is a copy of correspondence, in English, from EULER to Intercontinental dated 31 March, 2001 ("March 31 Letter") indicating that AKP was considering filing a counterclaim and that KKG&R would defend the counterclaim and "bill on an hourly basis" after receiving a "retainer." Intercontinental was never asked for a retainer or provided with an hourly-basis bill. In fact, until speaking with U.S. counsel after having received the

default judgement entered in May 2002, I and Intercontinental did not know what a counterclaim was in a U.S. legal proceeding. The significance of such a pleading, that one was filed in the Collection Action, or that Intercontinental was not being represented and defended in such an action is reflected in the 3 April 2001 correspondence from Intercontinental to EULER Exhibit D in responding to "the March 31 letter Intercontinental advised EULER: "With reference to the aforesaid complaint, we do not comment the. legal procedures (dates, answers etc.) as we do not know anything about."

16. Between 9 April 2001 and 28 August 2001, Intercontinental received one piece of correspondence regarding the Collection Action from EULER and none from KKG&R or Roosen. Attached as Exhibit E is the 9 April 2001 correspondence, which is simply a one line report relating to documentation of the debt at issue in the Collection Action.

17. The next communication Intercontinental received regarding this dispute was on or about 29 August 2001, Exhibit F, which was a bill from the Circuit Court for the Sixth Judicial Circuit of Michigan in the. amount of US $75. Intercontinental immediately sent a letter, attaching the bill, to EULER asking for an explanation, advice and direction. See Exhibit F.

18. On 12 September 2001, EULER advised Intercontinental that it had asked for an explanation of the bill from U.S. counsel and would respond to Intercontinental's inquiry when it, EULER, received a response. See Exhibit G.

19. On 13 September 2001, Intercontinental telefaxed to EULER a copy of the order of default and order dismissing the Collection Action, and a requested an explanation of those documents. See Exhibit H. Intercontinental had received these documents, that are in English, in the mail.

20. On 14 September 2001, EULER advised Intercontinental that the bill was a simple administrative cost and that on the Collection Action was terminated on 13 September

2001. See Exhibit I.. Attached to EULER's September 14 letter, I now know, was also a copy of the 28 August 2001 order of default. No mention of that order was included in EULER's letter to Intercontinental.

21. On or about 16 October 2001, Intercontinental received via U.S. Registered Mail an additional copy of the default order. Exhibit I. Intercontinental immediately telefaxed a copy of that document to EULER with a request that EULER explain to Intercontinental what was taking place;in the U.S. litigation. See Exhibit J.

22. On 25 October 2001, EULER telefaxed a note to Intercontinental reading: "After receiving the attachment documents, it is recommended they be ignored since the case was dismissed and no further action was being taken." Attached to the 25 October 2001 telefax is a copy of the default order. See Exhibit K

23. On 9 November 2001, EULER again advised Intercontinental that the Collection Action had been definatively concluded. See Exhibit L.

24. Not until 14 May 2002 did Intercontinental receive any further communication. On that date, Intercontinental received via U.S. Registered Mail a copy of Defendants' Motion for Entry of Judgement Amount indicating a motion date of 15 May 1901 [sic] at 8:30 a.m. Exhibit M. I, on behalf on behalf of Intercontinental, immediately telefaxed this document to Intercontinental's U.S. counsel, Nicola Fiordalisi. Since that date, Intercontinental has diligently been investigating the Collection Action in order to determine what occurred and why.

25. With respect to the allegations of AKP, Kotz and Wysocki:

(a) At no time did Intercontinental commit a fraud on or fraudulently induce any activity or forbearance by AKP, Kotz and/or Wysocki;

(b) At no time did Intercontinental engage in any activity(ies) alleged by AKP, Kotz and/or Wysocki to be fraudulent, tortious and/or defamatory.

26. In fact, as memorialized in Exhibit A, by the time the relationship between Intercontinental and AKP, Kotz and Wysocki ended, it was Intercontinental that was owed money by AKP. If there had been any additional issues to be resolved between Intercontinental, those issues would have been incorporated and merged into the September 1996 Agreement. See Exhibit A.

27. Further, and in direct contradiction to the Affidavit of Mark Love submitted in support of the Motion for Entry of Judgement Amount, it is the principals of AKP who volunteered to execute personal guaranties in order to retire outstanding debt and induce the continued participation of Intercontinental in their business relationship. See Exhibit A, in which Wysocki writes to Intercontinental's counsel confirming his personal unlimited guaranty is, being offered to collateralize "monies owed by American Keyboard Products, Inc. ("AKP") to Intercontinental Electronics, S.p.A. ("Intercontinental").

28. As is also noted in AKP's Motion for Entry of Judgement Amount, AKP voluntarily expended capital to establish a sales and distribution network. The principals of AKP developed its business and marketing plans independent of Intercontinental. To the extent that AKP undertook excessive debt, and or contracted for shipments that it could not pay for, such activities were not undertaken at the direction of Intercontinental.

29. To the best of my knowledge and belief, Sercio Bianchi was at all relevant times an employee of Titan, not Intercontinental. I am advised that Bianchi did not make any of the representations regarding solicitations of Mark Love ("Love") or instructions, suggestions or commendation's that

Love put AKP out of business. To the extent any such instructions, suggestions or recommendations were made, they occurred without the authority or permission of Intercontinental.

30. Upon information and belief, Love resigned his position with AKP on his own accord and for his own reasons, which are unknown to me.

VERIFICATION

I, Mauro Galanti, declare:

I am President of Intercontinental Electronics S.p.A., a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason I have read the foregoing Motion to Vacate Default Judgment of Intercontinental Electronics, S.p.A. and know its contents. The matters stated in it are true and of my own knowledge except as to those matters which are stated on information and belief and as to those matters, I believe them to be true.

Pursuant to 18 U.S.C. §1746(1), I declare under penalty of perjury, under the laws of the United States of America and State of Michigan, that the foregoing is true and correct.

Executed on June 5, 2002.

/s/ Mauro Galanti
MAURO GALANTI

FURTHER, Affiant sayeth not.
Executed on 5 June 2002.

/s/ Mauro Galanti
MAURO GALANTI

SANGSTER, WYSOCKI AND HAMLING, P.C.
Attorneys And Counselors of Law
400 Renaissance Center, Suite 2555
Detroit, Michigan 48243-1675

(313) 259-8300
(313) 259-1451

September 5, 1996

Mr. Nicola Fiordalisi
Bowles, Keating, Hering, Matuszewick & Fiordalisi
135 South LaSalle St., Suite 1140
Chicago, IL 60603

Dear Mr. Fiordalisi:

In line with our telephone conversation of this data and my telephone conversation with Sergio Biachi of this date, the following is my understanding with respect to monies owed by American Keyboard Products, Inc. (AKP) to Intercontinental Electronics, SpA ("Intercontinental"):

1. The amount owing to intercontinental as of this date is $88,020.00.

2. AKP will begin to make monthly payments against the outstanding balance as soon as cash flow permits. In any event, the balance owing as of September 30, 1996 will be paid in full not later than October 15, 1997.

3. Commencing April 1, 1997, AKP will pay interest to Intercontinental at the rata of 1.2% per month on the outstanding balance due and owing to Intercontinental from time to time.

4. AKP and Intercontinental will work together to resolve the issue of fixing the defective MF-01s, RD-70s and D-9 products.

5. The payment of the $88,020.00 will be guaranteed by Gregory L. Wysocki pursuant to the terms of a certain Unlimited Guaranty of even date hereof, a copy of which is attached hereto and the terms of which are incorporated herein by reference.

If the terms of this letter accurately reflect the discussions of the parties, please have the appropriate officer of Intercontinental execute this letter as indicated below and return a copy TO THE UNDERSIGNED. Please note that the proposals set forth in this letter are contingent upon the closing of the Doutache Floor Plan Facility.

Sincerely,

/s/ Gregory L. Wysocki
GREGORY L. WYSOCKI

UNLIMITED GUARANTY

TO: INTERCONTINENTAL ELECTRONICS SPA

Detroit, Michigan
Dated this ___ day of
September, 1996

For valuable consideration, the sufficiency and receipt of which is hereby acknowledged and agreed to, and to induce you to continue to extend credit to American Keyboard Products, Debtor of digital piano inventory from Inter continental Electronics SpA ("Intercontinental"), the undersigned, jointly and severally, do absolutely and unconditionally hereby guaranty to Intercontinental the full and prompt payment when due, whether due by acceleration, maturity, demand or otherwise, of any indebtedness of the Principal Debtor to Intercontinental as evidenced by a certain Letter Agreement of even date hereof between Intercontinental and the Principal Debtor to which the Unlimited Guaranty is incorporated in full by reference, all without you first having to proceed against the Principal Debtor or otherwise enforce or commence to enforce payment thereof.

The undersigned hereby waives demand, presentment, protest and notice (whether of nonpayment, dishonor, protest or otherwise) and further waives notice of your acceptance hereof.

It is hereby consented and agreed that you may, from time to time, without notice and without in any manner affecting or impairing the obligations created hereby, sell, release, surrender, exchange, extend, renew, substitute, settle, compromise, waive, subordinate or modify, with or without consideration and on such terms and conditions as may be acceptable to you, any and all collateral, security, guaranties, obligations, indebtedness, liabilities, notes, instruments, or other evidence of indebtedness and/or the person or persons

obligated thereon concerning the indebtedness for which payment is guaranteed hereby.

It is agreed that the liability of the undersigned is independent of any other guarantees at any time in effect with respect to all or any part of the Principal Debtor's indebtedness to you, and that the liability created hereby may be enforced regardless of the existence of any other guaranties.

This Unlimited Guaranty shall be binding upon the heirs, representatives, executors, administrators, successors and assigns of the undersigned.

This instrument is intended to take effect as a sealed instrument and its validity and construction shall be governed by the laws of the State of Michigan, and the undersigned does hereby agree and consent to justification in the Circuit Court in the County of Wayne, State of Michigan for the purpose of resolving any matters related to the interpretation and enforcement of the Guaranty of Collusion.

WITNESSES:

_____ _____

Gregory L. Wysocki

_____ Dated:

ACKNOWLEDGED BY:

AMERICAN KEYBOARD PRODUCTS INC.

By: _____

Mark Love, President

Dated:

LAW OFFICES
KAHN, KAHN, GIBSON AND ROOSEN
Professional Corporation
Suite 750 Columbia Center
201 West Big Beaver Road
Troy, Michigan 40084

Telephone (248) 524-1505
Fax (248) 524-2155

February 29, 2000

Euler American Credit Indemnity
100 E. Pratt Street
Baltimore, MD 21202-1003
Attn: John J. Masson, Client Service

RE: *Intercontinental Electronics Spa v American Keyboard Products. Inc.*
O/File No: 026354
Y/Filo No: 210294

Dear Mr. Massone:

I have been able to verify the residential address of Gregory Wysocki, Robert C. Katz, Kip Anderson and James Ramge, who are guarantors client's account. I found, however, no voluntary payment cooperation and I recommend suit in order to place maximum pressure on debtor. In order to move forward I require costs advancement in the amount of $250.00 and a 5% non-contingent suit fee $1,320.00 in order to move forward.

Should client desire suit, the enclosed Affidavit should be complete , notarized, and returned to our office. Suit will be immediately forthcoming thereafter.

I invite you to telephone me directly at (248) 740-5695 if I can be of further assistance to you in this regard.

Very truly yours,

KAHN, KAHN, GIBSON AND ROOSEN
/s/ Richard G. Roosen
RICHARD G. ROOSEN

RGR/jma
Encls 217372-4

FACSIMILE TRANSMITTAL SHEET

TO: Alberto Bernardini

FROM: John Massone

FAX NUMBER: 9011-3906-8729-2792

DATE: March 31, 2001

COMPANY: ESIAC

PHONE NUMBER

SENDER'S REFERNECE NUMBER: #210294

RE: American Keyboard Products, Inc.

YOUR REFERENCE NUMBER:
CE/1996/13225 Intercontinental Electronics

X Urgent	For Review	Please Comment	X Please Reply	Please Recycle

We have no record of any response to the attorney's letter of February 20th which was E-mailed to you on March 3rd. The attorney requested an immediate response from your insured at that time It now appears that if the debtor prevails and files a counterclaim the attorney will request a retainer in advance to defend the counterclaim against which he will bill on an hourly basis.

LAW OFFICES
KAHN, KAHN, GIBSON AND ROOSEN
Professional Corporation
Suite 750 Columbia Center
201 West Big Beaver Road
Troy, Michigan 40084

Telephone (248) 524-1505
Fax (248) 524-2155

To: John Massone

From: Richard G. Roosen, Esq.

Fax No: 410-554-0890

Date: March 30, 2001

Number of Pages: 9

Documents Sent: Defendant's Motion

Message: Please, have client respond to my previous letter of Feb. 20, ASAP or debtor's motion for countersuit will most likely be granted on April 4th.

STATE OF MICHIGAN
The Circuit Court for the County of Oakland

00-024354-CK

TO BE FILED WITH ASSIGNMENT CLERK BY
4:30 P.M. ON OR BEFORE WEDNESDAY PRECEDING
MOTION DAY

PRAECIPE FOR MOTION AND
MISCELLANEOUS DOCKET

INTERCONTINENTAL ELECTRONICS, S.p.A.,
Plaintiff,

vs.

AMERICAN KEYBOARD PRODUCTS, INC., ROBERT C. KOTZ
and GREGORY WYSOCKI,
Defendant.

Motion Date: Wednesday, April 4, 2001

Motion Title: Motion to extend dates and allow defendants to file counterclaim

YOUR MOTION WILL NOT BE SCHEDULED IF YOU
FO NOT COMPLETE EITHER #1 OR #2 BELOW:

1. I hereby certify that I have made personal contact with Richard Roosen, Esq. on March 27, 2001, requesting concurrence in the relief sought with this Motion and that concurrence has been denied.

2. I have made reasonable and diligent attempts to contact counsel requesting concurrence in the relief sought with this Motion on ____, 19__.

Dated March 27, 2001

Moving Party: Christopher A. Cornwall (P42721)

Attorney for: Defendants

Phone: (313) 259-8300

(Motion briefs must be delivered to the Judge's chambers)

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024356-CK

INTERCONTINENTAL ELECTRONICS S.p.A.,
a foreign corporation

Plaintiff,

vs

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally.

Defendants.

NOTICE OF HEARING

To: Richard G. Roosen, Esq.
Attorney for Plaintiff

PLEASE TAKE NOTICE that Defendants Motion To Extend Dates and Allow Defendants To File Counterclaim will be brought on for hearing before the Honorable Wendy Potts, in her Courtroom, on *Wednesday, April 4, 2000 at 8:30 a.m.*, or soon thereafter as counsel may be heard.

Dated: March 27, 2001

KOTZ, SANGSTER, WYSOCKI
AND BERG, P.C.

By: /s/ Christopher A. Cornwall
Christopher Cornwall (P42721)
Danielle N. Mammel (PS6161)
Attorney for Defendants
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS S.p.A.,
a foreign corporation
Plaintiff,

vs.

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally.
Defendants.

KAHN, KAHN, GIBSON AND ROOSEN
By: Richard G. Roosen (P35222)
Attorney for Plaintiff
201 West Big Beaver Road
Ste. 750
Troy. Michigan 40084
(248) 524-1505

KOTZ, SANGSTER, WYSOCKI AND HAMLING, P.C.
By: Christopher A. Cornwall (P42721)
Attorney for Defendants
400 Renaissance Center, Suite 2555
Detroit, Michigan 48243
(313) 259-8300

MOTION TO EXTEND DATES AND ALLOW DEFENDANTS TO FILE COUNTERCLAIM

Defendants herein, AMERICAN KEYBOARD PRODUCTS, INC., ROBERT C. KOTZ AND GREGORY WYSOCKI (collectively referred to as "AKP"), in their Motion to extend discovery and allow Defendants, to file a Counterclaim state as follows:

1. This is a breach of contract action filed by Intercontinental Electronics, S.P.A. ("Intercontinental") against AKP on July 2, 2000 and amended July 17, 2000.

2. Service upon Defendants occurred on October 4, 2000.

3. Upon receipt of service, counsel for AKP advised counsel for Intercontinental that documents located outside the State of Michigan would demonstrate the debt the sought in the Complaint had been fully satisfied.

4. Relying upon the representation, counsel for Plaintiff graciously agreed that an Answer to the Complaint would not be necessary pending receipt of the documents.

5. Counsel for AKP thereafter attempted to locate the documents over the holiday season. Due to an unanticipated delay in locating the documents, an Answer was filed on behalf of Defendants on January 5, 2001 in the interim upon request by counsel.

6. Due to the attempt to amicably resolve the dispute without further litigation, the parties stipulated to an Order modifying the Scheduling Order extending discovery dates by only sixty (60) days.

7. On February 15, 2001, documents were sent to counsel for Intercontinental for review in order to resolve the dispute. A subsequent call to counsel revealed that the documents had been sent to his clients in Italy for consideration.

8. Counsel for AKP has not received a response from counsel regarding the sufficiency of the documents, which is likely due to the fact Intercontinental is located overseas. During this time, discovery closed at the end of March and mediation is scheduled for April, 2001.

9. The parties have not conducted any discovery to date, although genuine attempts to resolve the dispute have been made since the filing of the Complaint.

10. After documents were submitted to counsel for Intercontinental, counsel for AKP has had additional conversations with former officers of AKP relating to defense of the litigation and the alleged amount owed to Intercontinental.

11. Based upon those conversations counsel for AKP discovered facts that demonstrate officers and/or employees of intercontinental made various fraudulent representations to AKP to induce personal guarantees and sales commitments and fraudulently conspired to successfully put AKP out of business.

12. Due to the existence of these new allegations, counsel for AKP respectfully requests this Court set a scheduling order to extend discovery an additional ninety (90) days allowing AKP to conduct discovery on the allegations in the Complaint and pursue the claims of fraud by the filing of a counterclaim.

13. Pursuant to MCR 2.118, leave shall be freely given when justice so requires.

14. Justice requires a counterclaim to be filed in this case. Intercontinental's principal place of business is in Europe, Due to its location, AKP desires to resolve all issues and disputes between the parties at one time. If discovery is not extended and/or a counter-complaint filed, AKP may have difficulty serving Intercontinental and/or may have to defend claims of lack of jurisdiction in a separate litigation. Intercontinental has availed itself to his jurisdiction as a Plaintiff and should be required to defend itself Against any opposing claim between the same patties.

15. If the Court grants the Motion, AKP willl file a counter-complaint within seven (7) days from the data of this having.

16. Counsel for Intercontinental does not object to the extension of discovery, but will not consent to AKP's request to file a counter-complaint.

WHEREFORE, Defendants, AMERICAN KEYBOARD PRODUCTS, INC., ROBERT C. KOTZ AND GREGORY WYSOCKI, respectfully request this Court grant their Motion to extend discovery and allow the filing of a counter-complaint within seven (7) days from the date of this hearing.

Dated; March 21. 2001

KOTZ, SANGSTER, WYSOCKI
AND BERG, P.C.

By: /s/ Christopher A. Cornwall (P42721)
Danielle N. Mammal (P56161)
Attorney for Defendants
400 Renaissance Center, Suite 2555
Detroit, Michigan 48243
313-259-8300

[Logo]

INTERCONTINENTAL ELECTRONICS S.P.A.

Spett.le
Euler-American Credit Indemnity
100-East Pratt Street
21202 Baltimore MD/USA

to: Mr.John Massone REF 210294

Pol.18011/755667 Sin. CE/1996/13225 American Keyboard Products

With reference to the afore said complaint, we do not comment the legal procedure (dates, answers etc.) as we do not know anything about.

Concerning the personal guarantees, they have been offered by the clients spontaneously to cover a further delay of the debts schedule.

Mr. Bianchi is no working for us anymore, but we try to get in touch with him to clear the matter.

Best regards.

Intercontinental Electronics SpA

67a

[Logo]

Spett.le
INTERCONTINENTAL ELECTRONICS, SPA
VIA BELVEDERE FUGLIENSE 8
47836 MONDAINO RN, ITALY
(RN)

Settore Sinistri Estero
Gina Marzi
Tel: +39 06/872927688
Fax: +39 06/87292792
Ns. Rif.:
Pol. n°18011/755667
Sin. n°CE/1996/13225
c/AMERICAN KEYBOARD PRODUCTS INC -
BLOOMFIELD HILLS MI

In relazione alla pratica in oggetto ci pregiamo informarVi che: abbiamo ricevuto l'allegata comunicazione dalla nostra cliente estera e non mancheremo di tenerVi al corrente sugli ulteriori sviluppi della pratica.

PER FACILITARE LA SUCCESSIVA CORRISPONDENZA VOGLIATE SEMPRE CITARE IL NUMERO DI SINISTRO E IL NOMINATIVO DEL DEBITORE.

Disdnti saluti.

EULER—SIAC Society Italiana Assicurazione Crediti S.p.A.

Sig.

68a

VISCOUNT

Intercontinental Electronics SpA
P.O. Box 5 - 47836 Mondaino RN
Tel.0541/981700
Fax 0541/869605
E-mail: r..gambini@viscount.it
Internet: www.viscount-organs.com

TELEFAX MESSAGE

Date: 29 Agosto 2001

To: Euler Siac SpA Settore Sinistri USA c.a. Capozza

From: Ufficio Assicurazioni

Pages: Tre compresa la presente

Oggetto : Sinistro CE 1996/13225 AKP

In relazione alla pratica in oggetto abbiamo ricevuto le allegate comunicazioni delle quali Vi chiediamo il significato.

Nell'attesa di un cortese riscontro l'occasione c'e gradita per porgere cordiali saluti.

Ufficio Assicurazioni
Roberto Gambini

THE CIRCUIT COURT
for the Sixth Judicial Circuit of Michigan
1200 North Telegraph Road
Pontiac, Michigan 48341-0404

Richard H. Lynch
Chief of Court Operations
Judicial Assistant

Diane E. Castle-Kratz
Caseflow/ADR Supervisor
(246) 858-5828

TO: INTERCONTINENTAL ELECTRONICS

DATE: August 17, 2001

RE: Case No. 2000-024354-CK
Case Name: INTERCONTINENTAL ELECTRON VS AMERICAN KEYBOARD PROD IN
Case Evaluation Date: August 10, 2001

We are writing to you for the following reason(s):

The Case Evaluation Clerk was not advised in writing of the settlement, dismissal, or entry of judgment at least 14 days before the scheduled case evaluation, you owe the case evaluation fee.

We have not received full payment of your case evaluation fee. There is an outstanding balance of $75.00.

Your total balance due is$75.00.

Failure to pay the total balance due may result in issuance of an Order to Show Cause.

IF YOU HAVE ANY QUESTIONS REGARDING THIS BILL, PLEASE CALL (248) 858-5828.

Make your check payable to "OAKLAND COUNTY CASE EVALUATION" and send to:

CASE EVALUATION CLERK
SIXTH JUDICIAL CIRCUIT COURT
1200 NORTH TELEGRAPH RD DEPT 404
PONTIAC MI 48341-0404

STATE OF MICHIGAN
6th CIRCUIT COURT
County of Oakland
1200 N. Telegraph, Pontiac, MI. 48341

Intercontinental Electronics, S.p.A.
Via Belevedere, Fugliense 8 47836
Mondiano Rn, Italy

Case No. 2000-024354-CK

INTERCONTINENTAL ELECTRONICS, S.p.A.,

vs.

AMERICAN KEYBOARD PRODUCTS, INC.,

The above case has been assigned for [ILLEGIBLE]

You will receive no further notice, No continuances will e granted except for good cause and with the approval of the assigned Judge.

Date 07-20-01

Caseflow/ADR Supervisor
248-858-0350

[Logo]

Roma, 12 settembre 2001

Spett.le
INTERCONTINENTAL ELECTRONICS SPA
VIA BELVEDERE FOGLIENSE 8
47040 MONDAINO
(RN)

Settore Sinistri Estero
Maria Domenica Nobili
Tel: +39 06/87007856
Fax: +39 06/87007792
Ns. Rif.:
Pol. n°18011/755667
Sin. n°CE/1996/13225
c/AMERICAN KEYBOARD PRODUCTS INC – BLOOMFIELD HILLS MI

In relazione alla pratica in oggetto ci pregiamo informarVi the abbiamo ricee•uto la Vostra comunicazione datata 29.08 2001 e abbiamo provveduto a sollecitarc it nostro corrispondente estero in merito. Sara nostra cura informarVi tempestivamente non appena in possesso di notizie.

PER FACILITARE LA SUCCESSIVA CORRISPONDENZA VOGLIATE SEMPRE. CITARE IL NUMERO DI SINISTRO E IL NOMINATIVO DEL DEBITORE.

Distinti salud.

EULER - SIAC Society Italiana Assicurazione Crediti S.p.A.

Sig.

72a

VISCOUNT

Intercontinental Electronics SpA
P.O. Box 5 - 47836 Mondaino RN
Tel.0541/981700
Fax 0541/869605
E-mail: r..gambini@viscount.it
Internet: www.viscount-organs.com

TELEFAX MESSAGE

Date: 13 Settembre 2001
To:Euler Siac SpA Sinistri USA c.a. Capozza
From: Ufficio Assicurazioni
Pages: Quattro compresa la presente

Oggetto : Sinistro CE 1996/13225 AKP

In relazione all'oggetto abbiamo ricevuto la comunicazione allegata in copia delta quale Vi chiediamo chiarimenti assieme at precedente nostro del 29 u.s.

L'occasione c'e gradita per salutare cordialmente.

Ufficio Assicurazioni
Roberto Cambini

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.p.A.,
a foreign corporation,
Plaintiff and Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants and Counter-Plaintiffs.

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

I, LINDA ZULEWSKI, being first duly sworn, depose and say that on this 7th day of September, 2001, I did serve a true copy of:

- *Order For Default Judgment Against Intercontinental Electronics. SPA; and*
- *Order Dismissing Plaintiff/Counter-Defendant Intercontinental Electronics, SPA's Complaint With. Prejudice,*

together with this Proof of Service upon Intercontinental Electronics, SPA, via Registered Mail/Return Receipt Re-

quested and via U.S. Mail by placing same in an envelope, addressed as below to:

INTERCONTINENTAL ELECTRONICS, SPA
VIA BELVEDERE FUGLIENSE 8
47836 MONDAINO RN, ITALY

/s/ Linda Zulewski
LINDA ZULEWSKI

Subscribed and sworn to before me
This 7th day of September, 2001

/s/ Lavonne G. Morgan
Lavonne G. Morgan, Notary Public
County of Macomb/Acting in Wayne
My Commission Expires: 01/19/04

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.p.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

KOTZ, SANGSTER, WYSOCKI
AND BERG, P.C.
By: Christopher A. Cornwall (P42721)
Attorney for Defendants
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

ORDER DISMISSING PLAINTIFF/COUNTER-DEFENDANT INTERCONTINENTAL ELECTRONICS, SPA'S COMPLAINT WITH REJUDICE

At a session of said Court, held in the Courthouse Bldg., Pontiac, Michigan on August 28, 2001

PRESENT: HONORABLE: Wendy Potts, Circuit Judge

Plaintiff/Counter-Defendant, Intercontinental Electronics. SPA, having failed to enter an Appearance within thirty (30)

days of the Court's Order of July 18, 2001 or appear at the Pretrial Conference on *August 28, 2001*, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED the Complaint filed by Intercontinental Electronics, SPA, is dismissed with prejudice.

WENDY POTTS
Circuit Judge
CIRCUIT COURT JUDGE

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-02 4354-CK

INTERCONTINENTAL ELECTRONICS, S.p.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

KOTZ, SANGSTER, WYSOCKI
AND BERG, P.C.
By: Christopher A. Cornwall (P42721)
Attorney for Defendants
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

ORDER FOR DEFAULT JUDGMENT AGAINST
INTERCONTINENTAL ELECTRONICS, SPA

At a session of said Court, held in the Courthouse Bldg. Pontiac Michigan on August 28, 2001.

PRESENT: HONORABLE: Wendy Potts, Circuit Court

Plaintiff/Counter-Defendant, Intercontinental Electronics, SPA, having failed to enter an Appearance within thirty (30) days of the Court's Order of July 18, 2001 or appear at the

Pretrial Conference on August 28, 2001, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED a Default Judgment shall be entered against Intercontinental Electronics, SPA in an amount to be determined by the Court upon the presentation of proofs by Counter-Plaintiffs, American Keyboard Products, Inc., Robert C. Kotz and Gregory Wysocki.

/s/ Wendy Potts
Circuit Court Judge

EULER
SIAC

PER FAX : 0541-869605
SSE

Roma. 14 settembre 2001
Spettle
Intercontinental Electronics Spa
Via Belvedere Fogliense 8
47040 Mondaino
(Rn)

Settore Sinistri Estero
Maria Grazia Capozza
Tel: +39 06/87007649
Fax: +39 06/87007792
Ns. Rif.:
Pol. n°18011/755667
Sin. n CE/ 1996/ 13225
c/American Keyboard Product's Inc—Bloomfield Hills M1

Alla c.a.: sig.re Gambina

In relazione alla pratica in oggetto ci pregiamo informarVi che:

—abbiamo ricevuto le Vostre comunicazioni datare

—29.8.2001: pare trattasi di richesta di cost arnministrativi maturati; abbiamo chiesto delucidazioni.
—13.9.2001: il tribunale avverte della chiusura del caso.

Per Facilitare La Successiva Corrispondenza Vogliate Sempre Citare Il Numero Di Sinistro E Il Nominativo Del Debitore.

Distinti saluti.

EULER-SIAC Societá Italiana Assicurazione Crediti S.p.A.

Intercontinental Electronics SpA
P.O. Box 5
47836 Mondaino RN
Tel.0541/981700
Fax 0541/869605
E-mail: r.gambini@viscount.it
Internet: www.viscount-organs.com

TELEFAX MESSAGE

Date: 04 Ottobre 2001

To: Euler Siac SpA Settore Sinistri Estero
Maria Grazia Capozza

From: Ufficio Assicurazioni

Pages: Cinque compresa la presente

Oggetto: Pol.18011/755667 Sin.CE/1996/13225 American Keyboard Products USA

In relazione all'oggetto e facendo seguito al Vostro datato 14/09/2001 Vi alleghiamo alla presente copia di ulteriore documentazione ricevuta.

Nell'attesa di leggervi in merito ringraziamo per la preziosa collaborazione salutando cordialmente.

Ufficio Assicurazioni

Robert Cambini

FAX INVIATO

DATA

ORA


United States Postal Service
REGISTERED MAIL
RR 793 405 415 US
KOTZ, SANGSTER,
WYSOCKI AND BERG, P.C.
ATTORNEYS AND COUNSELORS AT LAW
51
RETURN RECEIPT
REQUESTED
INTERCONTINENTAL ELECTRONICS, SPA
VIA BELVEDERE FUGLIENSE 8
47836 MONDAINO RN, ITALY
AIR MAIL
U.S. POSTAGE
PAID
DETROIT, MI
48243
SEP 07, 01
AMOUNT
$8.05
00047578-08
9142
U.S. POSTAGE
PAID
DETROIT, MI
48243
SEP 07, 01
AMOUNT
$1.25
00047578-08
9999
AIR MAIL

95

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND

INTERCONTINENTAL ELECTRONICS S.P.A.,
a foreign corporation
Plaintiff/Counter-Defendant,

vs

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation, ROBERT C. KOTZ and
GREGORY WYSOCKI, Jointly and Severally.
Defendants/Counter-Plaintiffs.

KOTZ, SANGSTER, WYSOCKI
AND BERG, P.C.
By: /s/ Christopher A. Cornwall (P42721)
Attorney for Defendants
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

ORDER FOR DEFAULT JUDGMENT AGAINST
INTERCONTINENTAL ELECTRONICS, SPA

At a session of said Court, held in the Courthouse Bldg., Pontiac, Michigan on August 28, 2001

PRESENT: HONORABLE: WENDY POTTS, *CIRCUIT Court Judge.*

Plaintiff/Counter-Defendant, Intercontinental Electronics, SPA, having failed to enter an Appearance within thirty (30) days of the Court's Order of July 18, 2001 or appear at the Pretrial Conference on *August 28, 2001*, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED a Default Judgment shall be entered against Intercontinental Electronics, SPA in an amount to be determined by the Court upon the presentation of proofs by Counter-Plaintiffs, American Keyboard Products, Inc., Robert C. Kotz and Gregory Wysocki.

/s/ Wendy Potts
Wendy Potts
Circuit Court Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND

INTERCONTINENTAL ELECTRONICS S.P.A.,
a foreign corporation
Plaintiff/Counter-Defendant,

vs

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation, ROBERT C. KOTZ and
GREGORY WYSOCKI, Jointly and Severally.
Defendants/Counter-Plaintiffs.

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

I, LINDA ZULEWSKI, being first duly sworn, depose and say that on this 7th day of September, 2001, I did serve a true copy of:

- Order For Default Judgment Against Intercontinental Electronics, SPA; and
- Order Dismissing Plaintiff/Counter-Defendant Intercontinental Electronics, SPA's Complaint With Prejudice,

together with this Proof of Service upon Intercontinental Electronics, SPA, via Registered Mail/Return Receipt Requested and via U.S. Mail by placing same in an envelope, addressed as below to:

INTERCONTINENTAL ELECTRONICS, SPA
VIA BELVEDERE FUGLIENSE 8
47836 MONDAINO RN, ITALY

FACSIMILE TRANSMITTAL SHEET

To: Maria Domenica Nobili

FROM: John Massone

FAX NUMBER: 9011-3906-8700-7792

DATE: October 25, 2001

COMPANY: ESIAC

RE: American Keyboard Products Inc.

NOTES/COMMENTS:

After reviewing the attached documents it is recommended they be ignored since the case was dismissed and no further action was being taken.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND

INTERCONTINENTAL ELECTRONICS S.P.A.,
a foreign corporation
Plaintiff/Counter-Defendant,

vs

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation, ROBERT C. KOTZ and
GREGORY WYSOCKI, Jointly and Severally.
Defendants/Counter-Plaintiffs.

KOTZ, SANGSTER, WYSOCKI
AND BERG, P.C.
By: /s/ Christopher A. Cornwall (P42721)
Attorney for Defendants
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

ORDER JUDGMENT AGAINST
INTERCONTINENTAL ELECTRONICS, S.P.A.

At a session of said Court, held in the Oakland County Circuit Court, City of Pontiac, State of Michigan on: May 15, 2002.

PRESENT: Honorable WENDY POTTS, *Circuit Court Judge.*

Upon having received Counter-Plaintiffs' Motion for Entry of Judgment Amount, having heard oral argument and otherwise being fully advised in the premises;

IT Is HEREBY ORDERED Judgment in the amount of $2,352,012.97 is entered against Intercontinental Electronics,

S.P.A. AND IN FAVOR OF American Keyboard Products, Inc.;

IT IS FURTHER ORDERED that a Judgment in the amount of $100,000.00 is entered against Intercontinental Electronics, S.P.A. and in favor of Gregory L. Wysocki; and

IT IS FURTHER ORDERED that a Judgment in the amount of $100,000.00 is entered against Intercontinental Electronics, S.P.A. and in favor of Robert C. Kotz.

CIRCUIT COURT JUDGE

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND

INTERCONTINENTAL ELECTRONICS S.p.A.,
a foreign corporation
Plaintiff/Counter-Defendant,

vs

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation, ROBERT C. KOTZ and
GREGORY WYSOCKI, Jointly and Severally.
Defendants/Counter-Plaintiffs.

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

I, LINDA ZULEWSKI, being first duly sworn, depose and say that on this 1st day of May, 2002, I did serve a true copy of ORDER OF JUDGMENT AGAINST INTERCONTINENTAL ELECTRONICS, S.P.A together with this Proof of Service upon Intercontinental Electronics, SPA, via Registered Mail/Return Receipt Requested and via U.S. Mail by placing same in an envelope, addressed as below to:

INTERCONTINENTAL ELECTRONICS, SPA
VIA BELVEDERE FUGLIENSE 8
47836 MONDAINO RN, ITALY

/s/ LINDA ZULEWSKI
Linda Zulewski

[LOGO]

SSE

Roma, 9 novembre 2001

Spettle
Intercontinental Electronics Spa
P.O. Box 5 – 47836 Mondaino
RN

Settore Sinistri Estero
Maria Grazia Capozza
Tel: +39 06/87007649
Fax: +39 06/87007792
Ns. Rif.:
Pol. n°18011/755667
Sin. n CE/ 1996/ 13225
c/American Keyboard Product's Inc—Bloomfield Hills M1

In relazione ally pratica in oggetto ci pregiamo informarVi che:

—abbiamo ricevuto la Vostra comunicazione datata 4.10.2001 ed alleghiamo

—la comunicazione della nostra corrispondente esters: la documentazione ricevuta é la comunicazione del Tribunale del Michigan relativamente alla chiusura definitiva, senza seguito, del procedimento legale a suo tempo attivato, a causa del mancato riscontro alle eccezioni sollevate dalla Keyboard Products.

PER FACILITARE LA SUCCESSIVA CORRISPONDENZA VOGLIATE SEMPRE CITARE IL NUMERO DI SINISTRO E IL NOMINATIVO DEL DEBITORE.

Distinti saluti.

EULER-SIAC Society Italianà Assicurazione Crediti S.p.A.

KOTZ, SANGSTER, WYSOCKI AND BERG, P.C.
ATTORNEYS AND COUNSELORS AT LAW
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

May 17, 2002

INTERCONTINENTAL ELECTRONICS SPA
VIA BELVEDERE FUGLIENSE 8
47836 MONDAINO RN, ITALY

Dear Sir or Madam:

Enclosed is a true copy of the judgment entered against Intercontinental Electronics, SPA on May 15, 2002 by the Circuit Court for Oakland County, Michigan, United States of America, and Proof of Service for same.

Sincerely,

/s/ R. EDWARD BOUCHER
R. Edward Boucher

Enclosure
VIA DHL DELIVERY (8512194191) AND
CERTIFIED MAIL No. 7001 0320 0001 5831 6236-
RETURN RECEIPT REQUESTED

TO BE FILED WITH ASSIGNMENT CLERK BY 4:30 P.M. ON OR BEFORE WEDNESDAY PRECEDING MOTION DAY

PRAECIPE FOR MOTION AND MISCELLANEOUS DOCKET

INTERCONTINENTAL ELECTRONICS S.p.A.,
a foreign corporation
Plaintiff,

vs

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation, ROBERT C. KOTZ and
GREGORY WYSOCKI, Jointly and Severally.
Defendants.

Motion Date: Wednesday, May 15, 1902

Motion Title: Defendants' Motion for Entry of Judgment Amount

YOUR MOTION WILL NOT BE SCHEDULED IF YOU DO NOT COMPLETE EITHER #1 OR # 2 BELOW:

1. I hereby certify that I have made personal contact with Intercontinental Electronics SPA on via Registered Mail/Return receipt on 05/01/02.

   1902, requesting concurrence in the relief sought with this Motion and that concurrence has been denied.

   OR

2. I have made reasonable and diligent attempts to contact counsel requesting concurrence in the relief sought with this Motion on _____, 19___.

Dated May 1, 19,02 Christopher A. Cornwall (P42721)
Attorney for Defendants

STATE OF MICHIGAN IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

INTERCONTINENTAL ELECTRONICS S.P.A.,
a foreign corporation
Plaintiff/Counter-Defendant,

vs

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation, ROBERT C. KOTZ and
GREGORY WYSOCKI, Jointly and Severally.
Defendants/Counter-Plaintiffs.

NOTICE OF HEARING

To: INTERCONTINENTAL ELECTRONICS, S.P.A.

PLEASE TAKE NOTICE that Defendants/Counter-Plaintiffs' Motion for Entry of Judgment Amount will be brought on for hearing before the Honorable Wendy Potts, in her courtroom, on Wednesday, May 15, 2002 at 8:30 a.m., or as soon thereafter as counsel may be heard.

Dated: May 1, 2002

Kotz, Sangster, Wysocki And Berg, P.C.
Christopher A. Cornwall (P42721)
Attorney for Defendants/Counter-Plaintiff
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

STATE OF MICHIGAN IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

INTERCONTINENTAL ELECTRONICS S.P.A.,
a foreign corporation
Plaintiff/Counter-Defendant,

vs

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation, ROBERT C. KOTZ and
GREGORY WYSOCKI, Jointly and Severally.
Defendants/Counter-Plaintiffs.

Kotz, Sangster, Wysocki And Berg, P.C.
Christopher A. Cornwall (P42721)
Attorney for Third-Party Defendants
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

MOTION FOR ENTRY OF JUDGMENT AMOUNT

Third-Party Plaintiffs herein, AMERICAN KEYBOARD PRODUCTS INC. ("AKP"), ROBERT C. KOTZ ("Kotz") and GREGORY L. WYSOCKI ("Wysocki"), by their attorneys, Kotz, Sangster, Wysocki and Berg, P.C., state in support of their Motion for Entry of Judgment Amount as follows:

1. This is an action by AKP and two of its shareholders against Intercontinental for fraud, fraudulent, inducement, tortuous interference with business relationships and business defamation.

2. On August 28, 2001, a Default Judgment was entered against Intercontinental in an amount to be determined by this Court for its failure to appear at the Pretrial Conference or

otherwise defend in the litigation over one (1) year after the primary Complaint was filed (EXHIBIT "1").

3. Intercontinental was provided notice of the Default Judgment by registered mail on September 7, 2001. More than twenty-one (21) days have elapsed since entry of the Default Judgment and no action has been taken by Intercontinental to set aside the Judgment.

4. AKP and Intercontinental had a business relationship whereby AKP was the exclusive distributor of digital pianos manufactured by Titan Music, SA ("Titan") under the trade name Viscount Professional in the United States and Canada.

5. In reliance upon the contract and to foster a good relationship between the parties, AKP invested significant capital (over a million dollars) to establish dealer relationships, hire salesmen and aggressively market products on a national basis for the sale of Viscount products.

6. Throughout the relationship, Intercontinental repeatedly assured AKP the business relationship would continue and additional money would be expended by Intercontinental for an expanded national market for the products.

7. In reliance upon the representations of the continued business relationship and increased financial assistance, AKP expended additional capital, purchased more inventory from Intercontinental for distribution through its dealer relationships and obtained floor plan financing 100% guaranteed by AKP's shareholders.

* * * *

13. In addition to the above damages, Intercontinental's willful, wanton, intentional and malicious conduct resulted in humiliation, outrage, business defamation and indignation in complete disregard for the rights of the AKP shareholders. Defendants Kotz and Wysocki are therefore entitled to ex

emplary damages and hereby request such damages in the amount of $ 100,000.00 each.

WHEREFORE, as a result of the above, AKP respectfully requests Judgment be entered against Intercontinental Electronics, S.P.A. in the amount of $2,352,012.97 and Robert Kotz and Gregory Wysocki respectfully request a Judgment be entered against Intercontinental Electronics, S.P.A. in the amount of $100,000.00 each, together with other such costs as this Court deems just and proper.

Dated: May 1, 2002

Kotz, Sangster, Wysocki And Berg, P.C.
Christopher A. Cornwall (P42721)
Attorney for Defendants/Counter-Plaintiff
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND

INTERCONTINENTAL ELECTRONICS S.p.A.,
a foreign corporation
Plaintiff/Counter-Defendant,

vs

AMERICAN KEYBOARD PRODUCTS. INC., a Michigan
corporation, ROBERT C. KOTZ and
GREGORY WYSOCKI, Jointly and Severally.
Defendants/Counter-Plaintiffs.

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

I, LINDA ZULEWSKI, being first duly sworn, depose and say that on this 7th day of September, 2001, I did serve a true copy of:

- *Order For Default Judgment Against Intercontinental Electronics, SPA; and*
- *Order Dismissing Plaintiff/Counter-Defendant Inter-continental Electronics, SPA's Complaint With Prejudice,*

Together with this proof of service upon Intercontinental Electronics, SPA, via Registered Mail/Return Receipt Requested and via U.S. Mail by placing same in an envelope, addressed as below to:

Intercontinental Electronics Spa
Via Belvedere Fugliense 8
47836 Mondaino Rn, Italy

/s/ LINDA ZULEWSKI
Linda Zulewski

97a

Receipt for Registered Mail
PS Form 3806
(Customer Copy)

Date Stamp
Unit ID: 0243
09/07/01

(Domestic Insurance is limited to $25,000; International Indemnity Is Limited (*See Reverse*)

To be completed by Post Office

Registered No. RR793405415US
Reg. Fee: $7.25
Handling Charge:
Postage: $.80
Special Delivery:
Return Receipt: $1.25
Restricted Delivery:
Received by:

To be completed by customer
(Please Print)
All Entries Must Be in Ballpoint or Typed

Customer Must Declare Full Value $___

☐ With Postal Insurnce
☐ Without Postal Insurance

From: Kotz Sangster Wysocki and Berg
400 Renaissance Center, Suite 2555
Detroit, MI 48243

Intercontinental Electronics
Via Belevedere, Fugliense 8
47836 Mondiano RN, Italy

STATE OF MICHIGAN IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

INTERCONTINENTAL ELECTRONICS S.P.A.,
a foreign corporation
Plaintiff/Counter-Defendant,

vs

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation, ROBERT C. KOTZ and
GREGORY WYSOCKI, Jointly and Severally.
Defendants/Counter-Plaintiffs.

Kotz, Sangster, Wysocki And Berg, P.C.
Christopher A. Cornwall (P42721)
Attorney for Third-Party Defendants
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

AFFIDAVIT OF MARK LOVE

STATE OF MICHIGAN)
)
COUNTY OF WAYNE)

I, Mark Love, after being first duly sworn, do hereby depose and state as follows:

1. I have personal knowledge of the facts set forth herein, and if sworn as a witness, I could testify as to such facts.

2. I was the President of American Keyboard Products, Inc. ("AKP"), a Michigan corporation, from December, 1994 until January, 1999.

* * * *

23. AKP attempted on several occasions to renegotiate an agreement with Titan and Intercontinental to purchase the inventory received just prior to the 1999 trade show to minimize the financial loss of AKP. Aft attempts were ignored.

24. T to inventory of AKP was subsequently liquidated at a significant loss to AKP and its shareholders (including Katz and Wysocki), who had personally guaranteed all of AKP's floor plan financing with lenders.

/s/ MARK LOVE
Mark Love

- Dated April 30, 2002

SCHEDULE TWO

Loan Breakout:

1.	$1M LOC Note	$1,000,000
	A. $350K Transamerica LOC	(350,000)
	B. $100K Deutsche LOC	(100,000)
	C. $75K Textron LOC	(75,000)
		$ 475,000
	D. Add back Transamerica Draw	$ 268,000
		$ 743,00
2.	PCS Loan	$ 265,000
3.	9/96 Loan	$ 100,000
4.	9/97 Loan	$ 75,000
5	2/98 Payment	$ (37,500)
6.	4/99 Payment	$ (45.000)
		$1,100,500

4. After Intercontinental improperly terminated its agreement with AKP, I attempted on several occasions to negotiate an agreement for Intercontinental to purchase the inventory of AKP to minimize the financial loss of the company. Intercontinental did not respond.

5. The inventory of AKP was subsequently liquidated to a total loss of $251,512.97 to AKP's shareholders, who had personally guaranteed financing with lenders.

FURTHER, Deponent sayeth not.

/s/ GREGORY L. WYSOCKI
Gregory L. Wysocki

Dated May 1, 2002

STATE OF MICHIGAN)
)
COUNTY OF WAYNE)

On this 30th day of April, 2002, before me, a Notary Public, in and for said County, personally appeared Gregory L. Wysocki to me personally known, who being by me duly sworn, did say that he is an officer of American Keyboard Products, Inc., the corporation named in and which executed the within instrument, and that said instrument was signed personally and on behalf of said corporation by authority of their Board of Directors and acknowledged said instrument to be the free act and deed of said corporation.

/s/ MARGARET MOYE,
Notary Public
Wayne County, Michigan
My Commission Expires:
07/26/05

STATE OF MICHIGAN IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

INTERCONTINENTAL ELECTRONICS S.P.A.,
a foreign corporation
Plaintiff/Counter-Defendant,

vs

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation, ROBERT C. KOTZ and
GREGORY WYSOCKI, Jointly and Severally.
Defendants/Counter-Plaintiffs.

Kotz, Sangster, Wysocki And Berg, P.C.
Christopher A. Cornwall (P42721)
Attorney for Third-Party Defendants
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

AFFIDAVIT OF MARK LOVE

STATE OF MICHIGAN)
)
COUNTY OF WAYNE)

I, Mark Love, after being first duly sworn, do hereby depose and state as follows:

1. I have personal knowledge of the facts set forth herein, and if sworn as a witness, I could testify as to such facts.

2. I was the President of American Keyboard Products, Inc. ("AKP"); a Michigan corporation, from December, 1994 until January, 1999.

3. AKP and Titan Music, S.A., ("Titan") entered into a contract for AKP to be the exclusive dealer of digital pianos

manufactured by Titan under the trade name Viscount Professional in the United States and Canada.

4 All purchases of pianos were made through a related Titan company, Intercontinental Electronics, SPA ("Intercontinental").

5. Pursuant to the contract, .and in. reliance on the agreement between the 2 parties, AKP invested significant capital (over one million dollars) to establish dealer relationships, hire salesmen, market the products and create a national presence for the sale of Viscount products.

6. In the Fall of 1996, Titan and Intercontinental demanded the shareholders of AKP, including Robert C. Kotz ("Kotz") and Gregory L. Wysocki ("Wysocki"), to personally guarantee all prior purchases of Viscount products through Intercontinental.

7. On or about October 2, 1996, AKP shareholders, in reliance of numerous representations of increased financial assistance, increased marketing efforts and expanded business relations by Titan and Intercontinental, executed an unlimited guaranty only for the outstanding balance owed by AKP for inventory purchased prior to the date of the guarantee.

8. From October, 1996 to 1998, AKP continued to expand its dealer network and significantly increased its sales. However, AKP was still carrying a significant debt load for costs associated with developing a dealer base for sale of the Viscount products.

9. From October, 1996 to 1998, Intercontinental and Titan repeatedly assured AKP's officers and shareholders that the business relationship between Intercontinental, Titan and AKP would continue, and that additional money would be expended by Titan and Intercontinental for marketing and development of a national market for the products in order to continue to expand the volume of business between the companies.

10. In reliance on the representations of a continued business relationship and it increased financial assistance, AKP expended additional capital and purchased more inventory from titan and Intercontinental for distribution.

11. Despite the expansion of AKP's business and development of a strong dealer base, Titan and Intercontinental's high level executive, Sergio Bianchi ("Bianchi") approached me, as AKP's President, and inquired whether I would be interested in establishing a new company in order to eliminate the existing debt and exclude the shareholders of AKP.

12. Bianchi was convinced, and expressed to me, that AKP would be better off without the debt.

13. During a July 19, 1998 trade show in Nashville, Tennessee, Bianchi intensified his efforts to convince me AKP would be better off without the investors (including Kotz and Wysocki), and that a new company could successfully take over the territory exclusively serviced by AKP without any debt.

14. I refused Bianchi's offer and continued as President for AKP.

15. In December 1998, Bianchi again approached me during a business trip to Des Moines, Iowa to discuss a new company to take over the exclusive dealer relationship with Titan and Intercontinental.

16. During the meeting, Bianchi asked me to intentionally put AKP out of business by utilizing bad business practices. Once out of business, a new company would be able to obtain financing from overseas, purchase the existing AKP inventory at a substantial discount, avoid the existing debt of AKP (which had been incurred over the years to create an extensive dealer network), utilize the dealer base already established by AKP to obtain better pricing, and leave the existing

shareholders exposed to personal liability for the substantial guaranteed debt of AKP after it was forced out of business.

17. I refused this offer. Thereafter, Bianchi told me to either run AKP into the ground or Titan and Intercontinental would shut the business down by refusing additional shipments of product.

18. Consistent with the threat, Titan and Intercontinental initially refused approval for shipment of Viscount products to AKP of approximately $500,000.00, although AKP had arranged financing.

19. Shortly thereafter, Titan and Intercontinental changed their position and accepted the large order from AKP just prior to the 1999 trade show in Los Angeles.

20. After the large order was accepted, Bianchi told me Titan and Intercontinental were going to ford a different distributor and all new Viscount products at the upcoming 1999 trade show would be displayed in a different distributor's booth.

21. During the 1999 trade show, Viscount products were displayed in a different distributor's booth. In addition, Bianchi actively contacted and solicited existing customers of AKP on behalf of Titan and Intercontinental to purchase its products from a new distributor and represented AKP would no longer distribute Viscount products.

22. The actions of Titan and Intercontinental destroyed AKP's business and good will with its network of dealers. As a result, AKP was no longer a viable company and I resigned in January 1999.

23. AKP attempted on several occasions to negotiate an agreement with Titan and Intercontinental to purchase the inventory received just prior to the 1999 trade show to AKP minimize the financial loss of AKP. All attempts were ignored.

24. The inventory of AKP was subsequently liquidated at a significant loss to AKP and its shareholders (including Kotz and Wysocki , who had personally guaranteed all of AKP's floor plan financing with lenders.

Further, Deponent sayeth not.

/s/ MARK LOVE
Mark Love

Dated: April 30, 2002

SUPREME COURT, APPELLATE DIVISION,
FIRST DEPARTMENT, NEW YORK

MARION BROWN ET AL.,
Appellants,

v.

ROSEDALE NURSERIES, INC., ET AL., RESPONDENTS, ET AL.,
Defendant.

(March 2, 1999)

Order, Supreme Court, New York County (Beverly Cohen, J.), entered on or about June 12, 1998, which denied plaintiffs' motion for a default judgment and dismissed the complaint, unanimously modified, on the law, the facts, and in the exercise of discretion, to reinstate the complaint, with leave to plaintiffs to renew their motion for a default judgment upon proper papers, within 30 days of the date of this order, and otherwise affirmed, without costs.

In concluding that plaintiffs had abandoned their complaint against defendant Rockefeller Center Properties because they had failed "to take proceedings for the entry of judgment within one year after the default" (*CPLR 3215 [c]*), the court failed to consider plaintiffs' order to show cause, brought within one year of defendant's default, before Justice Braun, seeking entry of a default judgment. Although Justice Braun did not sign that order to show cause, it has been recognized that "[a]s long as 'proceedings' are being taken, and these proceedings manifest an intent not to abandon the case but to seek a judgment, the case should not be subject to dismissal" (7 Weinstein-Korn-Miller, NY Civ Prac ¶ 3215.14).

We do not agree with the Supreme Court's conclusion that plaintiffs had to establish actual or constructive notice of the hazard that caused the slip and fall, on their motion for entry of a default judgment, because a defendant in default is deemed to have admitted "all traversable allegations in the complaint, including the basic allegation of liability, but does not admit the plaintiffs conclusion as to damages" (*Rokina Opt. Co. v Camera King*, 63 NY2d 728, 730). However, plaintiffs' complaint, verified by their attorney, and their affidavit in support of entry of a default judgment in their favor, which incorporated conclusory, hearsay statements from their attorney, were insufficient to support entry of a default judgment pursuant to CPLR 3215 (f) (*see, Feffer v Malpeso*, 210 AD2d 60, 61). In the circumstances presented, plaintiffs are granted leave to reapply for a default judgment, on proper papers, within 30 days of the date of this order.

Concur—Ellerin, J. P., Williams, Wallach and Tom, JJ.

APPENDIX F

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

KOTZ, SANGSTER, WYSOCKI
AND BERG, P.C.
By: Christopher A. Cornwall (P42721)
Attorney for Counter-Plaintiffs
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

ORDER OF JUDGMENT AGAINST
INTERCONTINENTAL ELECTRONICS, S.P.A.

At a session of said Court, held in he Oakland County Circuit Court, City of Pontiac, State of Michigan, on May 15, 2002.

PRESENT: HONORABLE Wendy Potts, *Circuit Court Judge*

Upon having received Counter-Plaintiffs' Motion for Entry of Judgment Amount, having heard oral argument and otherwise being fully advised in the premises;

IT IS HEREBY ORDERED a Judgment in the amount of $2,352,012.97 is entered against Intercontinental Electronics, S.P.A. and in favor of American Keyboard Products, Inc.;

IT IS FURTHER ORDERED that a Judgment in the amount of $100,000.00 is entered against Intercontinental Electronics, S.P.A. and in favor of Gregory L. Wysocki; and

IT IS FURTHER ORDERED that a Judgment in the amount of $100,000.00 is entered against Intercontinental Electronics, S.P.A. and in favor of Robert C. Kotz.

THIS ORDER RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

Wendy Potts
CIRCUIT COURT JUDGE

APPENDIX G

STATE OF MICHIGAN
SIXTH JUDICIAL CIRCUIT COURT
(OAKLAND COUNTY)

Case No. 00.024354 CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a Foreign Corporation,
Plaintiff,

v

AMERICAN KEYBOARD PRODUCTS, INC., ROBERT KOTZ,
Defendant.

MOTION PROCEEDINGS

TAKEN BY VIDEO TAPE RECORDINGS

BEFORE THE HONORABLE Wendy Potts, *Circuit Judge*

Pontiac, Michigan—Wednesday, May 15, 2002

APPEARANCES:
For the Plaintiff: No Appearance

For the Defendant:
CHRISTOPHER A. CORNWALL (P42721)
400 Renaissance Center # 2555
Detroit, Michigan 48243
(313) 259.8300

Fara Duffey
Livingston/Oakland Court Reporting
(810) 229-9487

TABLE OF CONTENTS

Page

WITNESSES:

None

EXHIBITS:

None

[3] Pontiac, Michigan
Wednesday, May 15, 2002
at 09:09:35 a.m.

COURT CLERK: Your Honor, next calling docket number six, *Intercontinental v American Keyboard*, 2000.024354 CK.

THE COURT: Morning—

MR. CORNWALL: Good morning, your Honor. Christopher Cornwall on behalf of Counter-Plaintiffs, American Keyboard and also Gregory Wysocki and Robert Kotz. With me today is Mr. Wysocki. Your Honor, this is our motion for entry of a judgment amount. You had a default . . .

THE COURT: Right.

MR. CORNWALL: . . . that was entered in on August 28th.

THE COURT: Might the Plaintiff be here?

MR. CORNWALL: Pardon me?

THE COURT: Is it possible that another party will show up?

MR. CORNWALL: No. I mean . . .

THE COURT: I think we should wait until 9:30 on this and call it at 9:30. Okay?

MR. CORNWALL: That's fine. Okay.

(at 09:10:21—court recesses)

[4] (at 09:49:57 . court reconvenes)

COURT CLERK: Your Honor, recalling docket number six, *Intercontinental v American Keyboard*, 2000-024354 CK.

THE COURT: Morning. If your witness could be sworn, please.

MR. CORNWALL: Morning again.

COURT CLERK: Please raise your right hand. Do you solemnly swear or affirm that the testimony you're about to offer will be the truth, the whole truth and nothing but the truth?

MR. WYSOCKI: I do.

THE COURT: All right. The record should reflect no one is here opposing us.

MR. CORNWALL: Yes, that is correct. It's 9:30, your Honor. No one has appeared on behalf of Intercontinental. As I began to state earlier, this—the Court entered a default on August 28th, 2001. Notice was sent by registered mail on September 7th, 2001. Similar notice of this motion was sent a couple of weeks ago by registered mail also to Intercontinental. We have not, at any time since the entry of the default judgment for their failure to appear and prosecute their claim and defend the counter claims against them, have we either seen any type of objection or response in any way.

THE COURT: I see the outstanding line of credit, [5] Exhibit 31 111001000 . . .

MR. CORNWALL: $500.00.

THE COURT: . . . $500.00.

MR. CORNWALL: That is correct.

THE COURT: The lost inventory, there's also an affidavit on that.

MR. CORNWALL: That is correct.

THE COURT: $251,512.97.

MR. CORNWALL: That is correct.

THE COURT: Let's talk about the lost profit, interference with business relationship.

MR. CORNWALL: Okay.

THE COURT: Do you want to question the witness about that or how do you want to proceed?

MR. CORNWALL: Well, at first, let me just say that the basis of the $1,000,000.00 based on the lost profits and the tortuous interference, the business defamation and the fraud that Intercontinental committed on AKP, the Court is familiar with the facts. This is a situation there was an exclusive dealer, a representation agreement to sell pianos in the United States and Canada, during the time where Intercontinental was making representations for AKP to invest significant capital and to get the shareholders to personally guarantee those additional capital. At the same time, they were [6] approaching officers, trying to get them to bury—in essence, run the company into the ground, bury it, saddling the shareholders with the debt and at the same time then, being able to take all the fruits of their effort by establishing an extensive dealer network. By utilizing that network then and having a new company that wouldn't have any of this significant capital invested.

The $1,000,000.00 is based upon the extensive dealer network that's been established in the United States and Canada. The major capital had already been spent in this company and in essence, AKP was in the position to—in it's prime position to increase profits and grow. If the Court has any specific questions or would like me to ask questions as to validate those types of facts, we have the affidavit of Mr. Love that sets forth all of the acts—improper acts of Intercontinental. Mr. Wysocki also had an affidavit as to the outstanding inventory.

THE COURT: I know that. How do you come up with the number $1,000,000.00?

MR. CORNWALL: Well, the $1,000,000.00 is just a forecasted for projected profits of this company that would have been allowed to happen had these improper acts not occurred and we can ask—we can have Mr. Wysocki . . .

THE COURT: Okay.

MR. CORNWALL: . . .testify as to the potential [7] costs, which increase the profitability to them.

If you look at the totality of the circumstances, again from our point, you know, not only do we have the affidavit of Mark Love, who was the president at this time, that their reps approached them to say look, we can make more money if we set up a different structure. You can participate in this as an owner of the new entity. You know, we believe that, you know, based upon the fraud and their bad faith, we believe that's worth some kind of damage to us.

THE COURT: Okay. Anything else that you're asking for?

MR. CORNWALL: We're asking also for the business defamation counts for the Counter-Plaintiffs, Mr. Wysocki and Mr. Kotz for $100,000.00 each as to their claims.

THE COURT: All right. The matter is before the Court on a motion for entry of a judgment amount filed by the Defendants Counter-Plaintiffs. The case was dismissed last September. Although the Plaintiff initiated the lawsuit, it's counsel withdrew. It never hired new counsel or took further action. On August 28th, 2001, a default judgment was entered against the Plaintiff Counter-Defendant with the amount of damages to be determined and that is why you're here today.

The Counter-Defendant was provided with notice of [7] the default judgment by registered mail September 7th, 2001 and the parties had a business relationship whereby the Defendants Counter-Plaintiffs were the exclusive distributor of digital pianos in the United States and Canada and Defendants Counter-Plaintiffs invested over $1,000,000.00 to pursue the business relationship. However, Counter-Defendant engaged in fraud and other actions causing the failure of the relationships for the party. For example, in 1999, Counter-

Defendants solicited a large order from Counter-Plaintiff knowing it would be out of business shortly thereafter. See Exhibit 2.

The Court will award the following damages based on the affidavits presented and testimony heard today. Outstanding line of credit $1,100,500.00; lost inventory $251,512.97; lost profit interference with business relationship $1,000,000.00. The Counter-Plaintiff seeks damages as a result of Counter-Defendants willful wanton and outrageous conduct. The Court will award each of—are there two counter-plaintiffs?

MR. CORNWALL: Yes.

THE COURT: $100,000.00 each . . .

MR. CORNWALL: Thank you, your Honor. We will . . .

THE COURT: . . .under the judgment. Good luck collecting it.

MR. CORNWALL: Thank you. We will . . .

[10] THE COURT: It will be nice to say that you have that judgment, right?

MR. WYSOCKI: Yes, it will.

THE COURT: All right. Okay.

MR. CORNWALL: Thank you, your Honor. We'll submit an order today.

THE COURT: Okay.

(at 09:57:22 . court recesses)

* * *

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

I certify that this transcript, consisting of 11 pages, is a complete, true and correct transcript of the proceedings and testimony taken in this case on Wednesday, May 15, 2002. Some names and cases may be phonetically spelled.

August 13, 2002

/s/ Fara Duffey
Fara Duffey—CER 0904
Livingston/Oakland
Court Reporting
315 West Main Street
Brighton, Michigan 48116

APPENDIX H

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,

Plaintiff/Counter.Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter.Plaintiffs.

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

I, LINDA ZULEWSKI, being first duly sworn, depose and say that on this 1st day of May, 2002, I did serve a copy of PRAECIPE, NOTICE OF' HEARING AND MOTION FOR ENTRY OF JUDGMENT AMOUNT together with this Proof of Service upon Intercontinental Electronics, SPA, via Registered Mail/Return Receipt Requested and via U.S. Mail by placing same in an envelope, addressed as below to:

INTERCONTINENTAL ELECTRONICS, SPA
VIA BELVEDERE FUGLIENSE 8
47836 MONDAINO RN, ITALY

/s/ Linda Zulewski
LINDA ZULEWSKI

Subscribed and sworn to before me
This 1st day of May, 2002.

/s/ Danielle B. Miller
Danielle B. Miller, Notary Public
County of Wayne
My Commission Expires:

121a

Receipt for Registered Mail
PS Form 3806
June 2000
(Customer Copy)

Date Stamp
Unit ID: 0243
Clerk: KX7SRZ
05/01/02

(Domestic Insurance is limited to $25,000; International Indemnity Is Limited (*See Reverse*)

To be completed by Post Office

Registered No. RR793409505US
Reg. Fee: $7.25
Handling Charge:
Postage: $4.00
Special Delivery:
Return Receipt: $1.50
Restricted Delivery:
Received by:

To be completed by customer
(Please Print)
All Entries Must Be in Ballpoint or Typed

Customer Must Declare Full Value $___

☐ With Postal Insurnce
☐ Without Postal Insurance

From: Kotz Sangste Wysocki and Berg
400 Renaissance Center, Suite 2555
Detroit, MI 48243

Intercontinental Electronics
Via Belevedere, Fugliense 8 47836
Mondiano Rn, Italy

APPENDIX I

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

KOTZ, SANGSTER, WYOSKI AND BERG, P.C.
By: CHRISTOPHER A. CORNWALL (P 42721)
Attorneys for Third-Party Defendants
400 Renaissance Center, Ste. 2555
Detroit, MI 48243
(313) 259-8300

MOTION FOR ENTRY OF JUDGMENT AMOUNT

Third-Party Plaintiffs herein, AMERICAN KEYBOARD PRODUCTS, INC. ("AKP"), ROBERT C. KOTZ ("Kotz") and GREGORY L. WYSOCKI ("Wysocki"), by their attorneys, Kotz, Sangster, Wysocki and Berg, P.C., state in support of their Motion for Entry of Judgment Amount as follows:

1. This is an action by AKP and two of its shareholders against Intercontinental for fraud, fraudulent inducement,

tortious interference with business relationships and business defamation.

2. On August 28, 2001, a Default Judgment was entered against Intercontinental in an amount to be determined by this Court for its failure to appear at the Pretrial Conference or otherwise defend in the litigation over one (1) year after the primary Complaint was filed (EXHIBIT "1").

3. Intercontinental was provided notice of the Default Judgment by registered mail on September 7, 2001. More than twenty-one (21) days have elapsed since entry of the Default Judgment and no action has been taken by Intercontinental to set aside the Judgment.

4. AKP and Intercontinental had a business relationship whereby AKP was the exclusive distributor of digital pianos manufactured by Titan Music, SA ("Titan") under the trade name Viscount Professional in the United States and Canada.

5. In reliance upon the contract and to foster a good relationship between the parties, AKP invested significant capital (over a million dollars) to establish dealer relationships, hire salesmen and aggressively market products on a national basis for the sale of Viscount products.

6. Throughout the relationship, Intercontinental repeatedly assured AKP the business relationship would continue and additional money would be expended by Intercontinental for an expanded national market for the products.

7. In reliance upon the representations of the continued business relationship and increased financial assistance, AKP expended additional capital, purchased more inventory from Intercontinental for distribution through its dealer relationships and obtained floor plan financing I00% guaranteed by AK P's shareholders.

8. Despite the representations of an expanded business relationship and increased financial assistance, Intercon-

tinental approached one of AKP's officers with a proposal in December, 1998 to create a new company to take over the territory exclusively serviced by AKP, with the intent of obtaining the existing AKP inventory at a discount, avoiding the debt of AKP (which had been incurred to create an extensive dealer network) and leave existing shareholders of AKP with substantial guaranteed debt after it was forced out of business. (EXHIBIT "2", AFFIDAVIT OF MARK LOVE.)

9. In January, 1999, Intercontinental solicited a large order from AKP in anticipation of a trade show in Los Angeles knowing that it intended to run the company out of business shortly thereafter by severing the relationship and saddling the shareholders of the company with extensive debt. (EXHIBIT "2.")

10. After the order was placed, Intercontinental advised the customers of AKP during the Los Angeles trade show a different distributor would be used for all of its current and future products and that AKP would no longer distribute Viscount products. (EXHIBIT "2.")

11. As a result of Intercontinental's actions, AKP's relationships with its distributors and customers were destroyed, thereby forcing the company out of business.

12. As a result of the actions of Intercontinental, AKP and its shareholders suffered damages, including, but not limited to:

OUTSTANDING LINE OF CREDIT:	$1,100,500.00 (Exhibit "3")
LOST INVENTORV:	$ 251,512.97 (Exhibit "4")
LOST PROFITS/INTERFERENCE WITH BUSINESS RELATIONSHIPS:	$1,000,000.00
	$2,352,012.97

13. In addition to the above damages, Intercontinental's willful, wanton, intentional and malicious conduct resulted in humiliation, outrage, business defamation and indignation in complete disregard for the rights of the AKP shareholders.

Defendants Kotz and Wysocki are therefore entitled to exemplary damages and hereby request such damages in the amount of $100,000.00 each.

WHEREFORE, as a result of the above, AKP respectfully requests Judgment be entered against Intercontinental Electronics, S.P.A. in the amount of $2,352,012.97 and Robert Kotz and Gregory Wysocki respectfully request a Judgment be entered against Intercontinental Electronics, S.P.A. in the amount of $100,000.00 each, together with other such costs as this Court deems just and proper.

Dated: May 1, 2002

KOTZ, SANGSTER, WYOSKI
AND BERG, P.C.

By: /s/ Christopher A. Cornwall
CHRISTOPHER A. CORNWALL (P 42721)
Attorneys for Defendants/Counter-Plaintiff
400 Renaissance Center, Ste. 2555
Detroit, MI 48243
(313) 259-8300

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

KOTZ, SANGSTER, WYOSKI
AND BERG, P.C.
By: Christopher A. Cornwall (P 42721)
Attorneys for Third-Party Defendants
400 Renaissance Center, Ste. 2555
Detroit, MI 48243
(313) 259-8300

ORDER FOR DEFAULT JUDGMENT AGAINST
INTERCONTINENTAL ELECTRONICS, SPA

At a session of said Court, held in the Courthouse Bldg., Pontiac, Michigan ON August 28, 2000.

PRESENT: HONORABLE: Wendy Potts, *Circuit Court Judge.*

Plaintiff/Counter-Defendant, Intercontinental Electronics, SPA, having failed to enter an Appearance within thirty (30) days of the Court's Order of July 18, 2001 or appear at the

Pretrial Conference on *August 28, 2001*, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED a Default Judgment shall be entered against Intercontinental Electronics, SPA in an amount to be determined by the Court upon the presentation of proofs by Counter-Plaintiffs, American Keyboard Products, Inc., Robert C. Kotz and Gregory Wyoski.

WENDY POTTS,
Circuit Court Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

I, LINDA ZULEWSKI, being first duly sworn, depose and say that on this 7th day of September, 2001, I did serve a true copy of:

- *Order For Default Judgment Against Intercontinental Electronics, SPA; and*
- *Order Dismissing Plaintiff/Counter-Defendant Intercontinental Electronics, SPA's Complaint With Prejudice,*

together with this Proof of Service upon Intercontinental Electronics, SPA, via Registered Mail/Return Receipt Re-

quested and via U.S. Mail by placing same in an envelope, addressed as below to:

INTERCONTINENTAL ELECTRONICS, SPA
VIA BELVEDERE FUGLIENSE 8
47836 MONDMINO RN, ITALY

/s/ Linda Zulewski
LINDA ZULEWSKI

Subscribed and sworn to before me
This 7th day of September, 2001

/s/ Lavonne G. Morgan
Lavonne G. Morgan, Notary Public
County of Macomb/Acting in Wayne
My Commission Expires: 01/19/04

130a

Receipt for Registered Mail
PS Form 3806
June 1986
(Customer Copy)

POSTMARK OF
Unit ID: 0243
Clerk: [ILLEGIBLE]
09/07/01

(Domestic Insurance is limited to $25,000; International Indemnity Is Limited (*See Reverse*)

To be completed by Post Office

Registered No. R793405415US
Reg. Fee: $7.25
Handling Charge:
Postage: $0.80
Special Delivery:
Return Receipt: $1.25
Restricted Delivery:
Received by:

To be completed by customer
(Please Print)
All Entries Must Be in Ballpoint or Typed

Customer Must Declare Full Value $___

☐ With Postal Insurnce
X Without Postal Insurance

From: Kotz Sangste Wysocki and Berg
400 Renaissance Center, Suite 2555
Detroit, MI 48243

Intercontinental Electronics
Via Belevedere, Fugliense 8 47836
Mondiano Rn, Italy

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

KOTZ, SANGSTER, WYOSKI
AND BERG, P.C.
By: Christopher A. Cornwall (P 42721)
Attorneys for Third-Party Defendants
400 Renaissance Center, Ste. 2555
Detroit, MI 48243
(313) 259-8300

AFFIDAVIT OF MARK LOVE

COUNTY OF WAYNE)
)
STATE OF MICHIGAN)

I, Mark Love, after being first duly sworn, do hereby depose and state as follows:

1. I have personal knowledge of the facts set forth herein, and if sworn as a witness, I could testify as to such facts.

2. I was the President of American Keyboard Products, Inc. ("AKP"), a Michigan corporation, from December, 1994 until January, 1999.

3. AKP and Titan Music, S.A., ("Titan") entered into a contract for AKP to be the exclusive dealer of digital pianos manufactured by Titan under the trade name Viscount Professional in the United States and Canada.

4. All purchases of pianos were made though a related Titan company, Intercontinental Electronics, SPA ("Intercontinental").

5. Pursuant to the contract, and in reliance on the agreement between the parties, AKP invested significant capital (over one million dollars) to establish dealer relationships, hire salesmen, market the products and create a national presence for the sale of Viscount products.

6. In the Fall of 1996, Titan and Intercontinental demanded the shareholders of AKP, including Robert C. Kotz ("Kotz") and Gregory L. Wysocki ("Wysocki"), to personally guarantee all prior purchases of Viscount products through Intercontinental.

7. On or about October 2, 1996, AKP shareholders, in reliance of numerous representations of increased financial assistance, increased marketing efforts and expanded business relations by Titan and Intercontinental, executed an unlimited guaranty only for the outstanding balance owed by AKP for inventory purchased prior to the date of the guarantee.

8. From October, 1996 to 1998, AKP continued to expand its dealer network and significantly increased its sales. However, AKP was still carrying a significant debt load for costs associated with developing a dealer base for sale of the Viscount products.

9. From October, 1996 to 1998, Intercontinental and Titan repeatedly assured AKP's officers and shareholders that

the business relationship between Intercontinental, Titan and AKP would continue, and that additional money would be expended by Titan and Intercontinental for marketing and development of a national market for the products in order to continue to expand the volume of business between the companies.

10. In reliance on the representations of a continued business relationship and increased financial assistance, AKP expended additional capital and purchased more inventory from Titan and Intercontinental for distribution.

11. Despite the expansion of AKP's business and development of a strong dealer base, Titan and Intercontinental's high level executive, Sergio Bianchi ("Bianchi"), approached me, as AKP's President, and inquired whether I would be interested in establishing a new company in order to eliminate the existing debt and exclude the shareholders of AKP.

12. Bianchi was convinced, and expressed to me, that AKP would be better off without the debt.

13. During a July 19, 1998 trade show in Nashville, Tennessee, Bianchi intensified his efforts to convince me AKP would be better off without the investors (including Kotz and Wysocki), and that a new company could successfully take over the territory exclusively serviced by AKP without any debt.

14. I refused Bianchi's offer and continued as President for AKP.

15. In December 1998, Bianchi again approached me during a business trip to Des Moines, Iowa to discuss a new company to take over the exclusive dealer relationship with Titan and Intercontinental.

16. During the meeting, Bianchi asked me to intentionally put AKP out of business by utilizing bad business practices. Once out of business, a new company would be

able to obtain financing from overseas, purchase the existing AKP inventory at a substantial discount, avoid the existing debt of AKP (which had been incurred over the years to create an extensive dealer network), utilize the dealer base already established by AKP to obtain better pricing, and leave the existing shareholders exposed to personal liability for the substantial guaranteed debt of AKP after it was forced out of business.

17. I refused this offer. Thereafter, Bianchi told me to either run AKP into the ground or Titan and Intercontinental would shut the business down by refusing additional shipments of product.

18. Consistent with the threat, Titan and Intercontinental initially refused approval for shipment of Viscount products to AKP of approximately $500,000.00, although AKP had arranged financing.

19. Shortly thereafter, Titan and Intercontinental changed their position and accepted the large order from AKP just prior to the 1999 trade show in Los Angeles.

20. After the large order was accepted, Bianchi told me Titan and Intercontinental were going to find a different distributor and all new Viscount products at the upcoming 1999 trade show would be displayed in a different distributor's booth.

21. During the 1999 trade show, Viscount products were displayed in a different distributor's booth. In addition, Bianchi actively contacted and solicited existing customers of AKP on behalf of Titan and Intercontinental to purchase its products from a new distributor and represented AKP would no longer distribute Viscount products.

22. The actions of Titan and Intercontinental destroyed AKP's business and good will with its network of dealers. As a result, AKP was no longer a viable company and I resigned in January 1999.

23. AKP attempted on several occasions to negotiate an agreement with Titan and Intercontinental to purchase the inventory received just prior to the 1999 trade show to minimize the financial loss of AKP. All attempts were ignored.

24. The inventory of AKP was subsequently liquidated at a significant loss to MCP and its shareholders (including Kotz and Wysocki), who had personally guaranteed all of AKP's floor plan financing with lenders—

Further, Deponent sayeth not.

By: /s/ Mark Love
MARK LOVE

Dated: April 30, 2002

Subscribed and sworn to before me
This 30th day of April, 2002.

/s/ Linda Zulewski
LINDA ZULEWSKI, Notary Public
County of Wayne
My Commission expires: 9-21-05

SCHEDULE TWO

Loan Breakout:

1.	$1M LOC Note	$1,000,000	
	A. $350K Transamerica LOC	(350,000)	
	B. $100K Deufsche LOC	(100,000)	
		(75,000)	
	C. $75K Textron LOC(75.000)	$ 475,000	
	D. Add back Transamerica Draw	$ 268,000	
			$ 743,000
2.	PCS Loan		$ 265,000
3.	9/96 Loan		$ 100,000
4.	9/97 Loan		$ 75,000
5.	2/98 Payment		$ (37,500)
6.	4/99 Payment		$ (45,000)
			$1,100,500

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

KOTZ, SANGSTER, WYOSKI
AND BERG, P.C.
By: Christopher A. Cornwall (P 42721)
Attorneys for Counter-Plaintiffs
400 Renaissance Center, Ste. 2555
Detroit, MI 48243
(313) 259-8300

AFFIDAVIT OF GREGORY L. WYSOCKI

I, GREGORY L. WYSOCKI, after being first duly sworn, do hereby depose and state as follows:

1. I have personal knowledge of the facts set forth herein, and if sworn as a witness, I could testify as to such facts.

2. I am an officer of American Keyboard Products, Inc. ("AKP"), a Michigan corporation, and I am authorized to make this affidavit on behalf of that corporation.

3. I have personally reviewed the Motion for Entry of Judgment Amount against Intercontinental Electronics, S.P.A. ("Intercontinental").

4. After Intercontinental improperly terminated its agreement with AKP, I attempted on several occasions to negotiate an agreement for Intercontinental to purchase the inventory of AKP to minimize the financial loss of the company. Intercontinental did not respond.

5. The inventory of AKP was subsequently liquidated to a total loss of $251,512.97 to AKP's shareholders, who had personally guaranteed financing with lenders.

FURTHER, Deponent sayeth not.

By: /s/ Gregory L. Wysocki
GREGORY L. WYSOCKI

Dated: 5/1/02

COUNTY OF WAYNE)
s)
STATE OF MICHIGAN)

On this 30th day of April, 2002, before me, a Notary Public, in and for said County, personally appeared Gregory L. Wysocki to me personally known, who being by me duly sworn, did say that he is an officer of American Keyboard Products, Inc., the corporation named in and which executed the within instrument, and that said instrument was signed personally and on behalf of said corporation by authority of their Board of Directors and acknowledged said instrument to be the free act and deed of said corporation.

/s/ Margaret Moye
Margaret Moye, Notary Public
Wayne County, Michigan
My Commission Expires: 07/26/05

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR ENTRY OF JUDGMENT AMOUNT

Defendants hereby rely upon the facts set forth in the accompanying Motion, together with the Exhibits attached thereto, in support of their Motion.

Dated: May 1, 2002

KOTZ, SANGSTER, WYSOCKI
AND BERG, P.C.
By: Christopher A. Cornwall (P42721)
Attorney for Defendants/Counter-Plaintiff
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

APPENDIX J

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
PlaintiffCounter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

KOTZ, SANGSTER, WYSOCKI
AND BERG, P.C.
By Christopher A. Cornwall (P42721)
Attorney for Defendants
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

ORDER FOR DEFAULT JUDGMENT AGAINST
INTERCONTINENTAL ELECTRONICS, SPA

At a session of said Court, held in the Courthouse Bldg., Pontiac, Michigan on August 28, 2001

PRESENT: HONORABLE: Wendy Potts, *Circuit Court Judge*.

Plaintiff/Counter-Defendant, Intercontinental Electronics, SPA, having failed to enter an Appearance within thirty (30) days of the Court's Order of July 18, 2001 or appear at the Pretrial Conference on *August 28, 2001*, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED a Default Judgment shall be entered against Intercontinental Electronics, SPA in an. amount to be determined by the Court upon the presentation of proofs by Counter-Plaintiffs, American Keyboard Products, Inc., Robert C. Kotz and Gregory Wysocki.

WENDY POTTS
Circuit Court Judge

APPENDIX K

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
PlaintiffCounter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/Counter-Plaintiffs.

KOTZ, SANGSTER, WYSOCKI
AND BERG, P.C.
By Christopher A. Cornwall (P42721)
Attorney for Defendants
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

ORDER DISMISSING PLAINTIFF/COUNTER-DEFENDANT INTERCONTINENTAL ELECTRONICS, SPA'S COMPLAINT WITH PREJUDICE

At a session of said Court, held in the Courthouse Bldg., Pontiac Michigan on August 28, 2001

Present: Honorable WENDY POTTS, *Circuit Court Judge.*

Plaintiff/Counter-Defendant, Intercontinental Electronics, SPA, having failed to enter an Appearance within thirty (30) days of the Court's Order of July 18, 2001 or appear at the Pretrial Conference on August 28, 2001, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED the Complaint filed by Intercontinental Electronics, SPA, is dismissed with prejudice.

WENDY POTTS
Circuit Court Judge

APPENDIX L

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS S.p.A.,
a foreign corporation
Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS. INC.,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally.
Defendants/Counter-Plaintiffs.

KAHN, KAHN, GIBSON
AND ROOSEN
By: Richard G. Roosen (P35222)
Attorney for Plaintiff
201 West Big Beaver Road
Ste. 750
Troy, Michigan 40084
(248) 524-1505

KOTZ, SANGSTER, WYSOCKI
AND HAMLING, P.C.
By: Christopher A. Cornwall
(P42721)
Attorney for Defendants
400 Renaissance Center, Suite 2555
Detroit, Michigan 48243
(313) 259-8300

ORDER PERMITTING WITHDRAWAL OF COUNSEL OF RECORD FOR PLAINTIFF INTERCONTINENTAL ELECTRONICS S.P.A.

At a session of said Court, held in the Courthouse Bldg., Pontiac, Michigan on _____, 2001

PRESENT: HONORABLE Wendy Potts, *Circuit Court Judge.*

Upon having received Plaintiffs Motion to Withdraw as Counsel, having reviewed Defendants/Counter-Defendants' Response, upon entertaining oral argument, and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that Plaintiffs Motion to Withdraw as Counsel is hereby granted and that such withdrawal is hereby recognized;

IT IS FURTHER ORDERED that Richard G. Roosen shall give Intercontinental Electronics, S.P.A. immediate notice of this Order and shall immediately file proof of service of the notice with the Court and serve same on Defendants/Counter-Plaintiffs;

IT IS FURTHER ORDERED that Intercontinental Electronics, S.P.A. shall have 30 days from the date of this Order to have substitute counsel file an appearance on its behalf;

IT IS FURTHER ORDERED that should Intercontinental Electronics, S.P.A. fail to have an appearance entered on its behalf within 30 days from the date this Order, its Complaint may be dismissed with prejudice and default judgment may be entered against Intercontinental on Defendants/Counter-Plaintiffs' Counter-Complaint; and

IT IS FURTHER ORDERED that this case is stayed for 30 days from the date of this Order.

WENDY POTTS
Circuit Court Judge

IT IS FURTHER ORDERED that a copy of this order shall be served upon the Plaintiff at its last known address of Via Belvedere, Fugliense 8, 47836 Mondaino Rn, Italy.

IT IS FURTHER ORDERED that a pretrial conference shall begin on August 25, 2001 at 8:30 am. The failure of plaintiff or its representative to appear shall result in a

dismissal of the complaint and a default judgment on the counter complaint.

IT IS FURTHER ORDERED that Defendants may file a third party complaint within 14 days from the date of this order.

[illegible]

APPENDIX M

STATE OF MICHIGAN
IN THE SIXTH JUDICIAL CIRCUIT COURT
(OAKLAND COUNTY)

Case No. 00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.p.A.,
a foreign corporation,
Plaintiff/Counter-Defendant.

v.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI.
Jointly and Severally,
Defendants/Counter-Plaintiffs.

MOTION TO WITHDRAW AS COUNSEL
TAKEN BY VIDEO TAPE RECORDING

BEFORE THE HONORABLE WENDY L. POTTS—
CIRCUIT JUDGE

Pontiac, Michigan—Wednesday, July 18, 2001

APPEARANCES:

For the Plaintiff:

MS. SHANNON M. PAWLEY (P 55163)
201 W. Big Beaver Road, Ste. 750
Troy, MI 48084
(248) 524-1505

For the Defendants:

MR. CHRISTOPHER A. CORNWALL (P 42721)
400 Renaissance Center, Ste.
2555 Detroit, MI 48243
(313) 259-8300

Fara Duffey, CER 0904

Livingston-Oakland Court Reporting
(810) 229-9487

TABLE OF CONTENTS

Page

WITNESSES:

None.

EXHIBITS:

None.

[3] Pontiac, Michigan
Wednesday, July 18, 2001
at 9:49 a.m.

THE CLERK: Calling docket number 14, case number Intercontinental Electronics versus American, 2000 024354-CK.

MS. PAWLEY: Ready, your Honor.

MR. CORNWALL: Good morning, your Honor. Christopher Cornwall on behalf of the defendants, American Keyboard Products, Robert Kotz, and Greg Wysocki.

MS. PAWLEY: Shannon Pawley for the plaintiff standing infor plaintiff—excuse me—attorney of record, Richard Rossen. This is our Motion to Withdraw. If you remember, your Honor—

THE COURT: I do remember.

MS. PAWLEY: —we were here last week.

THE COURT: And you promptly filed a motion which I appreciate.

MS. PAWLEY: Yes, and essentially as I had briefly summarized last week the attorney/client relationship has broken down. As you remember, my client is an Italian business. There are no offices in the U.S. nor are there any salespersons in the U.S. [4] All communications that we've been having with our client are via e-mail. We have been e-mailing our client with statuses, we've been giving them suggestions, and legal counsel which they have promptly either ignoring or refusing and until the point that they're not even communicating with us any more. So for that reason, we ask to be withdrawn.

MR. CORNWALL: Good morning, your Honor.

THE COURT: Good morning.

MR. CORNWALL: On behalf of the defendants, we certainly can sympathize with the difficulty of contacting clients. We have no objection to the withdraw of counsel. We submitted a proposed order along with our response.

THE COURT: Let me take a look at the order because I will allow you to withdraw, but let me look at the order.

MR. CORNWALL: Briefly if you'd like I can just—it just provides—

THE COURT: Immediate notice.

MR. CORNWALL: Gives immediate notice to the order, filed Proof of Service with it, 30 days to have substitute counsel file an appearance, and as what was briefly raised last week before you that if [5] appearances fail to be entered within 30 days that the Complaint should be dismissed with prejudice and a Default Judgment should be entered on our Counter-Complaint and that we also provide that the case has been stayed for the 30 days while substitute counsel is provided.

The only thing in looking at this that maybe should be added is a scheduling conference date maybe should added in there so that when this is served on them they can provide their new counsel with a status conference date so we can schedule new dates.

And also this Court had adjourned our motion last week cause we had to compel some depositions of these people and apparently we know the reason why they're having difficulty producing them. That can be addressed at a scheduling or a status conference afterwards

THE COURT: All right, let's do this. Your second in the last paragraph in the order:

> "It is further that should Intercontinental fail to have an appearance entered within 30 days from the date of this order . . ."

Are they a corporation?

MS. PAWLEY: Yes they are, your Honor.

[6] MR. CORNWALL: Yes.

THE COURT: Okay.

"Its Complaint may be dismissed with prejudice and default may be entered."

And a status—a pre-trial let's set it right now. Pre-trial August 28th at 8:30 a.m. Failure to attend the pre-trial the matter will be dismissed—failure of counsel to attend—failure of plaintiff to have a representative attend the pre-trial the matter will be dismissed.

MR. CORNWALL: Okay, and—

MS. PAWLEY: Only other thing I would ask to be included in the order is a--the address of my client in Italy so that the Court can have record as where to send all orders.

THE COURT: Excellent. Thank you.

MR. CORNWALL: That's what—that's a very good idea.

THE COURT: Very good.

MR. CORNWALL: And—and as counsel eluded to in her arguments also that we have found through the course of talking to some witnesses in discovery that there's a parent company; that that's—they're one in the same and usually is their more American type arm. [7] We'd ask the Court if while this case is being stayed if we would have leave to file a Third Party Complaint and bring them in while this matter is being stayed so that everyone can be in at the same time and if we can file that within 14 days.

THE COURT: That's fine.

MR. CORNWALL: Thank you.

THE COURT: You can add that to the order.

MS. PAWLEY: Thank you.

THE COURT: Okay.

(Proceedings concluded—9:53 a.m.)

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

I certify that this transcript, consisting of 8 pages, is a complete, true and correct transcript of the proceedings and testimony taken in this case on Wednesday, July 18, 2001. Some names and cases may be phonetically spelled.

Date: Aug. 13, 2002

/s/ Fara Duffey
FARA DUFFEY, CER 090
Livingston-Oakland Court Reporting
11768 Pine Mountain
Brighton, MI 48114

APPENDIX N

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

Case No: 00-024354-CK
Hon. Wendy L. Potts

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
Plaintiff/
Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan Corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants/
Counter-Plaintiffs.

KAHN, KAHN, GIBSON &
ROOSEN, P.C.
RICHARD G. ROOSEN (P35222)
Attorneys for Plaintiff
201 W. Big Beaver Rd., #750
Troy, MI 48084
(248) 524-1505

CHRISTOPHER A. CORNWALL (P42721)
Attorney for Defendant
400 Renaissance Center
Suite 2555
Detroit, MI 48243
(313) 259-8300

ANSWER TO DEFENDANT/COUNTER-PLAINTIFF'S COUNTERCLAIM

NOW COMES Plaintiff/Counter-Defendant, by and through its attorneys, KAHN, KAHN, GIBSON & ROOSEN, P.C., and for its Answer to Defendant/Counter-Plaintiff's Counterclaim, states as follows:

1. In answer to each and every counterclaim allegation that Plaintiff/Counter-Defendant is pecuniarily liable to Defendant/Counter-Plaintiff, Plaintiff/Counter-Defendant denies same as untrue.

2. Plaintiff/Counter-Defendant reserves the right to add additional answers to Defendant/Counter-Plaintiff's Counterclaim, as such become known to your Plaintiff/Counter-Defendant

WHEREFORE, Plaintiff/Counter-Defendant request that Defendant/Counter-Plaintiff's Counterclaim be denied.

KAHN, KAHN, GIBSON & ROOSEN, P.C.

By: /s/ Richard G. Roosen
RICHARD G. ROOSEN (P35222)
Attorneys for Plaintiff
201 W. Big Beaver Rd., #750
Troy, MI 48084
(248) 524-1505

Dated: June 4, 2001
#268732

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

Case No: 00-024354-CK
Hon. Wendy L. Potts

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,

Plaintiff/
Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan Corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,

Defendants/
Counter-Plaintiffs.

KAHN, KAHN, GIBSON &
ROOSEN, P.C.
RICHARD G. ROOSEN (P35222)
Attorneys for Plaintiff
201 W. Big Beaver Rd., #750
Troy, MI 48084
(248) 524-1505

CHRISTOPHER A. CORNWALL (P42721)
Attorney for Defendant
400 Renaissance Center
Suite 2555
Detroit, MI 48243
(313) 259-8300

AFFIRMATIVE DEFENSES OF
PLAINTIFF/COUNTER-DEFENDANT

NOW COMES Plaintiff/Counter-Defendant by and through its attorneys, KAHN, KAHN, GIBSON & ROOSEN, P.C., and for its Affirmative Defenses, states as follows:

1. Defendant/Counter-Plaintiff fails to allege a claim upon which relief can be granted.

2. Plaintiff/Counter-Defendant reserves the right to amend and add other affirmative defenses as such become know through discover to trial.

KAHN, KAHN, GIBSON & ROOSEN, P.C.

By: /s/ Richard G. Roosen
RICHARD G. ROOSEN (P35222)
Attorneys for Plaintiff
201 W. Big Beaver Rd., #750
Troy, MI 48084
(248) 524-1505

Dated: June 4, 2001
#268732

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

Case No: 00-024354-CK
Hon. Wendy L. Potts

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,

Plaintiff/
Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan Corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,

Defendants/
Counter-Plaintiffs.

KAHN, KAHN, GIBSON &
ROOSEN, P.C.
RICHARD G. ROOSEN (P35222)
Attorneys for Plaintiff
201 W. Big Beaver Rd., #750
Troy, MI 48084
(248) 524-1505

CHRISTOPHER A. CORNWALL (P42721)
Attorney for Defendant
400 Renaissance Center
Suite 2555
Detroit, MI 48243
(313) 259-8300

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS:
COUNTY OF OAKLAND)

JOYCE TITUS, being first duly sworn, deposes and says that on the 4th day of June, 2001, she served upon Christopher A. Cornwall, Esq., 400 Renaissance Center, Suite 2555, Detroit, MI 48243, a copy of Answer to Defendant/ Counter-Plaintiff's Counterclaim, Affirmative Defenses of Plaintiff/Counter-Defendant and Proof of Service, by placing same in a sealed envelope with proper first-class prepaid postage thereon, and placing same in the United States mail in the City of Troy.

I DECLARE UNDER PENALTY THAT THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

/s/ Joyce Titus
JOYCE TITUS

#268732

APPENDIX O

STATE OF MICHIGAN
IN THE 6TH JUDICIAL CIRCUIT FOR THE
COUNTY OF OAKLAND

Case No: 00-0 24 35 4- CK

INTERCONTINENTAL ELECTRONICS S.P.A.
A Foreign Corporation

Plaintiff,

vs.

AMERICAN KEYBOARD PRODUCTS, INC.
A Michigan Corporation,

ROBERT C. KOTZ, GREGORY WYSOCKI,
Jointly and severally,

Defendants.

KAHN, KAHN, GIBSON, & ROOSEN, P.C.
Richard G. Roosen (P35222)
201 West Big Beaver Rd., #750
Troy, MI 48084
(248) 524-1505

AMENDED COMPLAINT

THERE IS NO OTHER CIVIL ACTION BETWEEN THESE PARTIES ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE AS ALLEGED IN THIS COMPLAINT, PENDING IN THIS COURT, NOR HAS ANY SUCH ACTION BEEN PREVIOUSLY FILED AND DISMISSED OR TRANSFERRED AFTER HAVING BEEN ASSIGNED TO A JUDGE, MCR 2.1 13(C)(2)(a).

NOW COMES the above named Plaintiff, INTERCONTINENTAL ELECTRONICS S.P.A., by its Attorneys, Kahn, Kahn, Gibson, & Roosen, P.C., and complains against the above named Defendants, AMERICAN KEYBOARD PRODUCTS, INC., ROBERT C. KOTZ and GREGORY WYSOCKI as personal guarantors, and for its cause of action, Plaintiff says:

1. That Plaintiff is a foreign Corporation

2. That Defendant, AMERICAN KEYBOARD PRODUCTS, (hereinafter referred to as "AMERICAN") is a Michigan Corporation whose principle place of business is in the City of BLOOMFIELD HILLS, County of OAKLAND, State of MICHIGAN.

3. That Defendant, ROBERT C. KOTZ, (hereinafter referred to as "KOTZ") is an individual who resides in the City of GROSS POINTE, County of WAYNE, State of MICHIGAN.

4. That Defendant, GREGORY WYSOCKI, (hereinafter referred to as "WYSOCKI") is an individual who resides in the City of ROCHESTER, County of OAKLAND, State of MICHIGAN.

5. That the amount in controversy is $26,400.00.

Count 1

6. That Plaintiff's cause of action arises from the breach of an agreement made prior to February 28, 1996 with the Defendants for the sale of certain goods (described more particularly in Plaintiff's "Exhibit 1") for which Defendants agreed to pay Plaintiff valuable consideration for the same upon delivery.

7. That ROBERT C. KOTZ and GREGORY WYSOCKI have agreed to personally guarantee the performance of Defendant corporation, AMERICAN.

8. That Plaintiff has fully performed according to the terms of said agreement by delivering the goods requested by the Defendants.

9. That Defendants have breached its obligation to Plaintiff by failing and refusing to pay for the aforementioned goods as required by the agreement entered into with the Plaintiff and thereby remain indebted to the Plaintiff in the amount of $26,400.00.

10. Affidavit of Account is attached hereto, marked as Plaintiff's "Exhibit 2" and made a part hereof.

11. That Defendants have on several occasions admitted and acknowledged said indebtedness and promised payment thereon and is thereby indebted to Plaintiff in total sum of account stated between them.

12. Plaintiff has repeatedly demanded payment from Defendants but, to date, Defendants has refused to pay Plaintiff $26,400.00, to which it is legally entitled.

13. That it would be inequitable for this Court to allow Defendants to retain the benefit of the goods it has received or to be unjustly enriched at the expense of Plaintiff or allow Defendants to retain the value of the goods in issue without paying Plaintiff for same.

WHEREFORE, Plaintiff prays Judgment against Defendants, AMERICAN KEYBOARD PRODUCTS, INC., ROBERT C. KOTZ and GREGORY WYSOCKI, and seeks damages in the amount $26,400.00, plus costs, interest and attorney fees wrongfully sustained.

Count 2

14. Plaintiff hereby realleges and incorporates paragraphs one (1) through eleven (13) of this complaint as though the same were fully set forth herein.

15. In order to induce Plaintiff to enter into the Agreement, Defendant, ROBERT C. KOTZ, guaranteed payment and performance of Defendant Corporation, AMERICAN, for its obligations under the Agreement (guarantee attached within "Exhibit 1").

16. Defendant Personal Guarantor, ROBERT C. KOTZ, has failed to perform his obligation under the Guarantee despite repeated demand for payment.

WHEREFORE, Plaintiff prays Judgment against ROBERT C. KOTZ and seeks damages in the amount $26,400.00, plus costs, interest and attorney fees wrongfully sustained.

Count 3

17. Plaintiff hereby realleges and incorporates paragraphs one (1) through fourteen (16) of this complaint as though the same were fully set forth herein.

18. In order to induce Plaintiff to enter into the Agreement, Defendant, GREGORY WYSOCKI, guaranteed payment and performance of Defendant Corporation, AMERICAN, for its obligations under the Agreement (guarantee attached within "Exhibit 1").

19. Defendant Personal Guarantor, GREGORY WYSOCKI, has failed to perform his obligation under the Guarantee despite repeated demand for payment.

WHEREFORE, Plaintiff prays Judgment against GREGORY WYSOCKI and seeks damages in the amount $26,400.00, plus costs, interest and attorney fees wrongfully sustained.

KAHN, KAHN, GIBSON & ROOSEN, P.C.

By: /s/ Richard G. Roosen
RICHARD G. ROOSEN (P35222)
SHANNON M. PAWLEY (P55163)
Attorneys for Plaintiff
201 W. Big Beaver Road, #750
Troy, MI 48084
(248) 524-1505

Dated: July 18, 2000
#233368

intercontinental

ELECTRONICS S.P.A.

Stabilimento:
P.O. BOX 5 - 47040 MONDAINO (FO)
Tel. 0541/981700 Ric. Aut. - Telefax 0541/981052

Sede:
V. Parrocchiale
61020 BELVEDERE FOGLIENSE DI TAVULLIA (PS)
ITALY

SPETTLE
AMERICAN KEYBOARD PRODUCTS, INC.
2350 FRANKLIN RD. SUITE 115
48302 BLOOMFIELD HILLS MI - USA ( )

FATTURA VENDITA

PART. IVA / COD. FISCALE	DATA	ESENZIONE IVA	N.RO	CAT.	ZONA	AGENTE	DATA	RIFER.	N.RO	N.RO FATTURA	DATA	PAG.
96				0003	E436		30/01/96		35	37	30/01/96	1

ZONE	PORTO	MEZZO
SPORTO MARITTIMO	EX FACTORY	ITALCARGO

CODICE	DESCRIZIONE	U.M.	QUANTITA'	PREZZO UNITARIO	SCONTO	IMPORTO
	*Bolla 000035 del 30/01/96					
1RD70	MODULO LETTORE RD 70	NU	10.00	233.00		2330
4M12	MIXER M12	NU	1.00	472.00		472
6SV120HGB	PIANOFORTE SV120 H.G.BLACK	NU	2.00	1501.00		3002
6GSV1000B	PIANOFORTE GSV1000 LUCIDO NERO	NU	15.00	2150.00		32250
SV1000W	PIANOFORTE GSV1000 LUCIDO BIAN	NU	21.00	2150.00		45150
9B52BLK	BANCHETTO B. 52 NERO SATINATO	NU	26.00	27.00		702
9B52BLK	BANCHETTO B. 52 (Rosewood)	NU	15.00	27.00		405
9B62BHG	BANCHETTO B.62 LUCIDO NERO	NU	32.00	70.00		2240
9B62WHG	BANCHETTO B. 62 LUCIDO BIANCO	NU	21.00	70.00		1470

NTAINER NR. ICSU180898/0
AL NR. 14330

BEST AVAILABLE COPY

Non imponibile ai sensi art. 8 1° C.
DPR 633/72 E succ. modif.

IMPONIBILE	% SCONTO	IMPORTO SCONTO	SPESE ACCESSORIE	SPESE ESENTI IVA	IMPONIBILE	IVA E IMPOSTE
88021.00					88021.00	NON IMP. ART. 8 1

MERCE ESPORTATA CON BO...
* 8200

VALUTA	OMAGGIO	TOTALE IMPONIBILE	TOTALE IMPOSTE	TOTALE
USD		88 021.0		88 021.0

PAG	CONDIZIONI DI PAGAMENTO	BANCA D'APPOGGIO
013	(From date of B/L) BANK TRANSFER WITHIN 90 DAYS	

COLLI	PESO LORDO	PESO NETTO	VOLUME MC
000143	7560.70	5254.00	40.35

PAG	DATA SCADENZA	IMPORTO	TIPO PAG	DATA SCADENZA	IMPORTO	TIPO PAG	DATA SCADENZA	IMPORTO
M.D	29/04/96	88021.00						

EXHIBIT 1

SOC. L. 900.000.000 INT. VERS. - REGISTRO SOCIETA' M. [illegible]

intercontinental
ELECTRONICS S.P.A.

Stabilimento:
P.O. BOX 5 - 47040 MONDAINO (FO)
Tel. 0541/981700 Ric. Aut. - Telefax 0541/981052

Sede:
V. Parrocchiale
61020 BELVEDERE FOGLIENSE DI TAVULLIA (PS)
ITALY

SPETT.LE

AMERICAN KEYBOARD PRODUCTS, INC.
2350 FRANKLIN RD. SUITE 115
48302 BLOOMFIELD HILLS MI - USA ( )

FATTURA VENDITA

C. CLI.	PART. IVA / COD. FISCALE	DATA	ASSEGNAZIONE n.	N. RO	CAT.	ZONA	AGENTE	DATA	IMPEGNATIVO	N. RO	N. BOLLA	FATTURA	DATA	PAG.
0596					0003	E436		28/02/96		89	93	28/02/96		1

SPEDIZIONE	PORTO	NOTE
TRASPORTO MARITTIMO	EX FACTORY	ITALCARGO

	*Bolla 000089 del 28/02/96					
PA11HF01	MODULO LETTORE HF01	NU	5.00	448.00		2240.0
PA16SV100RSW	PIANOFORTE SV100 PALISSANDRO	NU	3.00	1095.00		3285.0
PA16SV120NBB	PIANOFORTE SV120 H.G.BLACK	NU	3.00	1501.00		4503.0
PA16SV120NBH	PIANOFORTE SV120 H.G. MAHOGAN	NU	5.00	1441.00		7205.0
PA16BSV1000H	PIANOFORTE GSV1000 MOGANO	NU	8.00	2573.00		20584.0
PA1' 2BNB	BANCHETTO B.62 LUCIDO NERO	NU	20.00	53.00		1060.0
PA19B62BNB	BANCHETTO B. 62 LUCIDO BIANCO	NU	10.00	53.00		530.0
PA19B62NNG	BANCHETTO D. 62 MOGANO LUCIDO	NU	30.00	18.00		540.0
PA19B62RSW	BANCHETTO B. 62 ROSWOOD	NU	2.00	27.00		54.0

CONTAINER NR.CASU463536/2
SEAL 085122

Fisc. [illegible] art. 8 1° C.
DPR 633/72 E succ. modif.

MERCE ESPORTATA CON BOLLE
N 1321 - JW. 23/2

TOTALE IMPONIBILE	SCONTI	IMPORTO SCONTO	SPESE ACCESSORIE	SPESE ESCLUSE IVA	IMPONIBILI	IVA E IMPOSTE
40001.00					40001.00	NON IMP. ART. 8 1

VALUTA	CAMBIO	TOTALE IMPONIBILE	TOTALE IMPOSTE	TOTALE
USD		40 001.0		40 001.0

COD. PAG.	CONDIZIONI DI PAGAMENTO	BANCA D'APPOGGIO
0	Come convenuto	

TOT. COLLI	PESO LORDO	PESO NETTO	VOLUME MC
000086	2926.50	2193.50	16.00

TIPO PAG.	DATA SCADENZA	IMPORTO	TIPO PAG.	DATA SCADENZA	IMPORTO	TIPO PAG.	DATA SCADENZA	IMPORTO

EXHIBIT "

CAP. SOC. L. 900 000 000 INT. VERS. - REGISTRO SOCIETÀ N. [illegible]

Sede:
V. Parpocchiale ,
61020 BELVEDERE FOGLIENSE
DI TAVULLIA (PS) - ITALY

XAB 0545063 /95

AMERICAN KEYBOARD PRODUCTS, INC.
2350 FRANKLIN RD. SUITE 115
48302 BLOOMFIELD HILLS MI - USA ( )
Tel.

BOLLA VENDITA

C. CLIENTE	P. IVA / COD. FISCALE	DATA	NUM.	CAU	BANCA	ABI	CAB	DATA	NUM.	NUM.	DATA	PAG.
10596			1	0003	E436					35	30/01/96	1

SPEDIZIONE	PORTO	CONSEGNA N.	PESO N.
TRASPORTO MARITTIMO	EX FACTORY		

CODICE ARTICOLO	DESCRIZIONE	U.M.	QUANTITA' ORDINATA	QUANTITA' EVASA	ANNOTAZIONI
9A11RD70	MODULO LETTORE RD 70	NU	10.00	AZ.ZZ	
9A14M12	MIXER M12	NU	1.00	A.ZZ	
9A16SV120HGB	PIANOFORTE SV120 H.G.BLACK	NU	2.00	E.ZZ	
9A16GSV1000B	PIANOFORTE GSV1000 LUCIDO NERO	NU	15.00	AM.ZZ	
9A16GSV1000W	PIANOFORTE GSV1000 LUCIDO BIAN	NU	21.00	EA.ZZ	
9A19B52BLK	BANCHETTO B. 52 NERO SATINATO	NU	26.00	EP.ZZ	
9A19B52BLK	BANCHETTO B. 52 (Rosewood)	NU	15.00	AM.ZZ	
9A19B62BHG	BANCHETTO B.62 LUCIDO NERO	NU	32.00	GE.ZZ	
9A19B62WHG	BANCHETTO B. 62 LUCIDO BIANCO	NU	21.00	EA.ZZ	

CONTAINER NR.ICSU180898/0
SEAL NR.14330

TABELLA DI CONVERSIONE (D.M. 30/03/91): 1=A; 2=E; 3=B; 4=H; 5=A; 6=A; 7=B; 8=A; 9=Z

COD. PAG.	CONDIZIONI DI PAGAMENTO	BANCA DI APPOGGIO
5013	BANK TRANSFER WITHIN 90 DAYS	

CAUSALE DEL TRASPORTO	ASPETTO ESTERIORE DEI BENI	PORTO	NUM. COLLI	PESO LORDO
VENDITA	CARTONI	VETTORE	000143	7560.70

DATA INIZIO TRASPORTO	ORA	VOLUME	PESO NETTO

CONSEGNATE	FIRMA DEL CONSEGNATARIO	FIRMA DEL DESTINATARIO

1° VETTORE	DATA / ORA RITIRO MERCE	FIRMA 1° VETTORE
CIONI LUCIANO P.zza 4 Novembre, 4 41055 MONTESE (MO)	01/02/96 14:45	Cioni

2° VETTORE	DATA / ORA RITIRO MERCE	FIRMA 2° VETTORE

EXHIBIT " 1 "

1678

Sede
V. Parrocchiale'
61020 BELVEDERE FOGLIENSE
DI TAVULLIA (PS) - ITALY
CAP. SOC. L. 800.000.000 INT. VERS.
REG. SOC. N. 4640 TRIBUNALE PESARO
C.C.I.A.A. PS N. 88184
COD. FISC. E PART. I.V.A. N. 00116270410
PARTITA I.V.A. IT 00116270410

XAB 0545124 /95

SPEDITA A:
AMERICAN KEYBOARD PRODUCTS, INC.
2350 FRANKLIN RD. SUITE 115
48302 BLOOMFIELD HILLS MI - USA ( )
Tel.

BOLLA VENDITA

C. CLIENTE	P. IVA / COD. FISCALE	DATA	ESECUZIONE N.	NUM	CAT.	ZONA	AGENTE	DATA	IMPEGNATIVO	NUM	NUM. BOLLA	DATA	PAG.
10396					0003	E436					89	28/02/96	1

SPEDIZIONE	PORTO	COMMESSA N.	PEZZI N.
TRASPORTO MARITTIMO	EX FACTORY		

CODICE ARTICOLO	DESCRIZIONE	U.M.	QUANTITA' IN CIFRE	QUANTITA' IN LETTERE	ANNOTAZIONI
9A11MF01	MODULO LETTORE MF01	NU	3.00	M.ZZ	
9A168V100RSW	PIANOFORTE SV100 PALISSANDRO	NU	3.00	6.ZZ	
9A168V120HGB	PIANOFORTE SV120 H.G.BLACK	NU	3.00	6.ZZ	
9A168V120HGM	PIANOFORTE SV120 H.G. MAHOGAN	NU	5.00	M.ZZ	
9168SV1000M	PIANOFORTE GSV1000 MOGANO	NU	8.00	T.ZZ	
9A19B62BHB	BANCHETTO B.62 LUCIDO NERO	NU	20.00	EZ.ZZ	
9A19B62WHB	BANCHETTO B. 62 LUCIDO BIANCO	NU	10.00	AZ.ZZ	
9A19B62MHB	BANCHETTO B. 62 MOGANO LUCIDO	NU	30.00	BZ.ZZ	
9A19B62RSW	BANCHETTO B. 62 ROSWOOD	NU	2.00	E.ZZ	
	CONTAINER NR.CASU463536/2				
	SEAL NR.085122				

TABELLA DI CONVERSIONE (D.M. 30/08/93): 1=A; 2=B; 3=C; 4=N; 5=M; 6=P; 7=S; 8=T; 9=V; 0=Z

COD. PAG.	CONDIZIONI DI PAGAMENTO	BANCA DI APPOGGIO
0		

CAUSALE DEL TRASPORTO: ☐ VENDITA ☐ TRASF. INTERNO ☐ RESO ☐ LAVORAZIONE ☐ CESSIONE PER COMPLETAMENTO CONTO LAVORAZIONE ☐ CAMPIONATURA

	ASPETTO ESTERIORE DEI BENI	TRASPORTO A CARICO		N. DI COLLI	PESO LORDO
☐ VENDITA	CARTONI	VETTORE	☐ MITTENTE ☐ DESTINATARIO	000086	2926.50
DATA / PARZ. TRASPORTO / ORA	ANNOTAZIONI			VOLUME	PESO NETTO

CONDUCENTE	FIRMA DEL CONDUCENTE	FIRMA DEL DESTINATARIO

1° VETTORE	DATA / ORA RITIRO MERCE	FIRMA 1° VETTORE
ITALCONTAINER TRANSPORT S.r.l. Interporto di Bologna - BENTIVOGLIO (BO)	05/03/1996 : 11:45	

2° VETTORE	DATA / ORA RITIRO MERCE	FIRMA 2° VETTORE

168a

EXHIBIT " 1 "

UNLIMITED GUARANTY

TO: Interrcontinental Electronics SPA

Detroit, Michigan
Dated this 2nd day of
October, 1996

For valuable consideration, the sufficiency and receipt of which is hereby acknowledged and agreed to, and to induce you to continue to extend credit to American Keyboard Products, Inc., a Michigan corporation ("Principal Debtor"), in connection with the purchase by Principal Debtor of digital piano inventory from Intercontinental Electronics SpA ("Intercontinental"), the undersigned, jointly and severally, do absolutely and unconditionally hereby guaranty to Intercontinental the full and prompt payment when due, whether due by acceleration, maturity, demand or otherwise, of any indebtedness of the Principal Debtor to Intercontinental as evidenced by a certain Letter Agreement, dated September 5, 1996, between Intercontinental and the Principal Debtor to which this Unlimited Guaranty is annexed and into which the Unlimited Guaranty is incorporated in full by reference, all without you first having to proceed against the Principal Debtor or otherwise enforce or commence to enforce payment thereof.

The undersigned hereby waives demand, presentment, protest and notices (whether of nonpayment, dishonor, protest or otherwise) and further waives notice of your acceptance hereof.

It is hereby consented and agreed that you may, from time to time, without notice and without in any manner affecting or impairing the obligations created hereby, sell, release, surrender, exchange, extend, renew, substitute, settle, compromise, waive, subordinate or modify, with or without consideration and on such terms and conditions as may be

acceptable to you, any and all collateral, security, guaranties, obligations, indebtedness, liabilities, notes, instruments, or other evidence of indebtedness and/or the person or persons obligated thereon concerning the indebtedness for which payment is guaranteed hereby.

It is agreed that the liability of the undersigned is independent of any other guaranties at any time in effect with respect to all or any part of the Principal Debtor's indebtedness to you, and that the liability created hereby may be enforced regardless of the existence of any other guaranties.

This instrument is intended to take effect as a scaled instrument and its validity and construction shall be governed by the laws of the State of Michigan, and the undersigned does hereby agree and consent to jurisdiction in the Circuit Court in the County of Wayne, State of Michigan for the purpose of resolving any matters related to the interpretation and enforcement of this Unlimited Guaranty.

/s/ James P. Stuart
JAMES P. STUART

Dated:

/s/ Kip D. Anderson
KIP D. ANDERSON

Dated:

/s/ Illegible

Dated: 10/2/96

_____
James A. Ramge

Dated:

/s/ Robert C. Kotz
ROBERT C. KOTZ

Dated: 10/2/96

/s/ Gregory L. Wysocki
GREGORY L. WYSOCKI

Dated: 10/2/96

Acknowledged By:

American Keyboard Products, Inc.

By: _____
Mark Love, President

Dated:

AFFIDAVIT

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

RICHARD G. ROOSEN, FIRST being duly sworn, depose & says that AMERICAN KEYBOARD PRODUCTS INC., GEORGE WYSOCKI, ROBERT C. KOTZ is justly indebted to INTERCONTINENTAL ELECTRONICS, S.P.A. in the sum of $26,400.00 for GOODS OR SERVICES and further swears that there is no set off, credit by payment or return, or by law or equity against this sum, and further states that all credits and allowances known to exist have heretofore been granted. Amount now due and payable therefore as taken from books and records of original entry is 526,400.00.

INTERCONTINENTAL ELECTRONICS, S.P.A.

By: /s/ Richard G. Roosen
RICHARD G. ROOSEN (P35222)
Agent & Attorney in Fact

Subscribed and sworn to before me on
JUNE 15, 2000

/s/ Pamela Brown
PAMELA BROWN
Notary Public, State of Michigan
MACOMB COUNTY, MI
My Commission Expires: 08/23/01

Exhibit "2"

APPENDIX P

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

00-024354-CK

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,
Plaintiff,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
Jointly and Severally,
Defendants.

KAHN, KAHN, GIBSON
AND ROOSEN
By: Richard G. Roosen (P35222)
Attorney for Plaintiff
201 West Big Beaver Road
Ste. 750
Troy, Michigan 40084
(248) 524-1505

KOTZ, SANGSTER, WYSOCKI
AND HAMLING, P.C.
By: Christopher A. Cornwall
(P42721)
Attorney for Defendants
400 Renaissance Center, Suite 2555
Detroit, Michigan 48243
(313) 259-8300

PROOF OF SEVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

I, LINDA ZULEWSKI, being first duly sworn, depose and say that on this 25th day of April, 2001, I did serve a copy of the COUNTER-COMPLAINT and true copies of ORDER ALLOWING DEFENDANTS TO FILE A COUNTER-CLAIM and STIPULATED ORDER MODIFYING SCHEDULING ORDER together with this Proof of Service on all attorneys of record via U.S. Mail by placing same in an envelope, addressed as below to:

Richard G. Roosen, Esq.
201 West Big Beaver, Ste. 750
Troy, Michigan 48084

/s/ Linda Zulewski
LINDA ZULEWSKI

Subscribed and sworn to before me
this 25th day of April 2001.

/s/ Lavonne G. Morgan
LAVONNE G. MORGAN, Notary Public
County of Macomb/Acting in Wayne
My Commission Expires: 01/19/04

APPENDIX Q

MICHIGAN COURT RULES OF 1985

CHAPTER 2. CIVIL PROCEDURE

Chapter 2. Civil Procedure

SUBCHAPTER 2.100 COMMENCEMENT OF ACTION; SERVICE OF PROCESS; PLEADINGS; MOTIONS

Subchapter 2.100 Commencement of Action; Service of Process; Pleadings; Motions

RULE 2.107 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(A) Service; When Required.

(1) Unless otherwise stated in this rule, every party who has filed a pleading, an appearance, or a motion must be served with a copy of every paper later filed in the action. A nonparty who has filed a motion or appeared in response to a motion need only be served with papers that relate to that motion.

(2) Except as provided in MCR 2.603, after a default is entered against a party, further service of papers need not be made on that party unless he or she has filed an appearance or a written demand for service of papers. However, a pleading that states a new claim for relief against a party in default must be served in the manner provided by MCR 2.105.

(3) If an attorney appears on behalf of a person who has not received a copy of the complaint, a copy of the complaint must be delivered to the attorney on request.

(4) All papers filed on behalf of a defendant must be served on all other defendants not in default.

(B) Service on Attorney or Party.

(1) Service required or permitted to be made on a party for whom an attorney has appeared in the action must be made on the attorney except as follows:

(a) The original service of the summons and complaint must be made on the party as provided by MCR 2.105;

(b) When a contempt proceeding for disobeying a court order is initiated, the notice or order must be personally delivered to the party, unless the court orders otherwise;

(c) After a final judgment has been entered and the time for an appeal of right has passed, papers must be served on the party unless the rule governing the particular postjudgment procedure specifically allows service on the attorney;

(d) The court may order service on the party.

(2) If two or more attorneys represent the same party, service of papers on one of the attorneys is sufficient. An attorney who represents more than one party is entitled to service of only one copy of a paper.

(3) If a party prosecutes or defends the action on his or her own behalf, service of papers must be made on the party in the manner provided by subrule (C).

(C) Manner of Service. Service of a copy of a paper on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.

(1) *Delivery to Attorney*. Delivery of a copy to an attorney within this rule means

(a) handing it to the attorney personally;

(b) leaving it at the attorney's office with the person in charge or, if no one is in charge or present, by leaving it in a conspicuous place; or

(c) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there.

(2) *Delivery to Party*. Delivery of a copy to a party within this rule means

(a)handing it to the party personally; or

(b) leaving it at the party's usual residence with some person of suitable age and discretion residing there.

(3) *Mailing*. Mailing a copy under this rule means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.

(D) Proof of Service. Except as otherwise provided by MCR 2.104, 2.105, or 2.106, proof of service of papers required or permitted to be served may be by written acknowledgment of service, affidavit of the person making the service, a statement regarding the service verified under MCR 2.114(A), or other proof satisfactory to the court. The proof of service may be included at the end of the paper as filed. Proof of service must be filed promptly and at least at or before a hearing to which the paper relates.

(E) Service Prescribed by Court. When service of papers after the original complaint cannot reasonably be made because there is no attorney of record, because the party cannot be found, or for any other reason, the court, for good cause on ex parte application, may direct in what manner and on whom service may be made.

(F) Numerous Parties. In an action in which there is an unusually large number of parties on the same side, the court on motion or on its own initiative may order that

(1) they need not serve their papers on each other;

(2) responses to their pleadings need only be served on the party to whose pleading the response is made;

(3) a cross-claim, counterclaim, or allegation in an answer demanding a reply is deemed denied by the parties not served; and

(4) the filing of a pleading and service on an adverse party constitutes notice of it to all parties. A copy of the order must be served on all parties in the manner the court directs.

(G) Filing With Court Defined. The filing of pleadings and other papers with the court as required by these rules must be with the clerk of the court, except that the judge to whom the case is assigned may accept papers for filing when circumstances warrant. A judge who does so shall note the filing date on the papers and transmit them forthwith to the clerk. It is the responsibility of the party who presented the papers to confirm that they have been filed with the clerk.

CREDIT(S)

[Effective March 1, 1985; amended September 9, 2003, effective January 1, 2004, 469 Mich.]

APPENDIX R

MICHIGAN COURT RULES OF 1985

CHAPTER 2. CIVIL PROCEDURE

Chapter 2. Civil Procedure

SUBCHAPTER 2.200 PARTIES; JOINDER OF CLAIMS AND PARTIES; VENUE; TRANSFER OF ACTIONS

Subchapter 2.200 Parties; Joinder of Claims and Parties; Venue; Transfer of Actions

RULE 2.201 PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(A) Designation of Parties. The party who commences a civil action is designated as plaintiff and the adverse party as defendant. In an appeal the relative position of the parties and their designations as plaintiff and defendant are the same, but they are also designated as appellant and appellee.

(B) Real Party in Interest. An action must be prosecuted in the name of the real party in interest, subject to the following provisions:

(1) A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought.

(2) An action on the bond of a public officer required to give bond to the people of the state may be brought in the name of the person to whom the right on the bond accrues.

(3) An action on a bond, contract, or undertaking made with an officer of the state or of a governmental unit, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, an unin-

corporated board, a public body, or a political subdivision, may be brought in the name of the state or the governmental unit for whose benefit the contract was made.

(4) An action to prevent illegal expenditure of state funds or to test the constitutionality of a statute relating to such an expenditure may be brought:

(a) in the name of a domestic nonprofit corporation organized for civic, protective, or improvement purposes; or

(b) in the names of at least 5 residents of Michigan who own property assessed for direct taxation by the county where they reside.

(C) Capacity to Sue or Be Sued.

(1) A natural person may sue or be sued in his or her own name.

(2) A person conducting a business under a name subject to certification under the assumed name statute may be sued in that name in an action arising out of the conduct of that business.

(3) A partnership, partnership association, or unincorporated voluntary association having a distinguishing name may sue or be sued in its partnership or association name, in the names of any of its members designated as such, or both.

(4) A domestic or a foreign corporation may sue or be sued in its corporate name, unless a statute provides otherwise.

(5) Actions to which the state or a governmental unit (including but not limited to a public, municipal, quasi-municipal, or governmental corporation, an unincorporated board, a public body, or a political subdivision)

is a party may be brought by or against the state or governmental unit in its own name, or in the name of an officer authorized to sue or be sued on its behalf. An officer of the state or governmental unit must be sued in the officer's official capacity to enforce the performance of an official duty. An officer who sues or is sued in his or her official capacity may be described as a party by official title and not by name, but the court may require the name to be added.

(D) Unknown Parties; Procedure.

(1) Persons who are or may be interested in the subject matter of an action, but whose names cannot be ascertained on diligent inquiry, may be made parties by being described as:

(a) unknown claimants;

(b) unknown owners; or

(c) unknown heirs, devisees, or assignees of a deceased person who may have been interested in the subject matter of the action.

If it cannot be ascertained on diligent inquiry whether a person who is or may be interested in the subject matter of the action is alive or dead, what disposition the person may have made of his or her interest, or where the person resides if alive, the person and everyone claiming under him or her may be made parties by naming the person and adding "or [his or her] unknown heirs, devisees, or assignees".

(2) The names and descriptions of the persons sought to be made parties, with a statement of the efforts made to identify and locate them, must be stated in the complaint and verified by oath or affirmation by the plaintiff or someone having knowledge of the facts in the plaintiffs behalf. The court may require a more specific description to be made by amendment.

(3) A publication giving notice to persons who cannot be personally served must include the description of unknown persons as set forth in the complaint or amended complaint.

(4) The publication and all later proceedings in the action are conducted as if the unknown parties were designated by their proper names. The judgment rendered determines the nature, validity, and extent of the rights of all parties.

(5) A person desiring to appear and show his or her interest in the subject matter of the action must proceed under MCR 2.209. Subject to that rule, the person may be made a party in his or her proper name.

(E) Minors and Incompetent Persons. This subrule does not apply to proceedings under chapter 5.

(1) *Representation.*

(a) If a minor or incompetent person has a conservator, actions may be brought and must be defended by the conservator on behalf of the minor or incompetent person.

(b) If a minor or incompetent person does not have a conservator to represent the person as plaintiff, the court shall appoint a competent and responsible person to appear as next friend on his or her behalf, and the next friend is responsible for the costs of the action.

(c) If the minor or incompetent person does not have a conservator to represent the person as defendant, the action may not proceed until the court appoints a guardian ad litem, who is not responsible for the costs of the action unless, by reason of personal misconduct, he or she is specifically charged

costs by the court. It is unnecessary to appoint a representative for a minor accused of a civil infraction.

(2) *Appointment of Representative.*

(a) Appointment of a next friend or guardian ad litem shall be made by the court as follows:

(i) if the party is a minor 14 years of age or older, on the minor's nomination, accompanied by a written consent of the person to be appointed;

(ii) if the party is a minor under 14 years of age or an incompetent person, on the nomination of the party's next of kin or of another relative or friend the court deems suitable, accompanied by a written consent of the person to be appointed; or

(iii) if a nomination is not made or approved within 21 days after service of process, on motion of the court or of a party.

(b) The court may refuse to appoint a representative it deems unsuitable.

(c) The order appointing a person next friend or guardian ad litem must be promptly filed with the clerk of the court.

(3) *Security.*

(a) Except for costs and expenses awarded to the next friend or guardian ad litem or the represented party, a person appointed under this subrule may not receive money or property belonging to the minor or incompetent party or awarded to that party in the action, unless he or she gives security as the court directs.

(b) The court may require that the conservator representing a minor or incompetent party give secur-

ity as the court directs before receiving the party's money or property.

(4) *Incompetency While Action Pending.* A party who becomes incompetent while an action is pending may be represented by his or her conservator, or the court may appoint a next friend or guardian ad litem as if the action had been commenced after the appointment.

CREDIT(S)

[Effective March 1, 1985; amended January 16, 1992, effective April 1, 1992, 439 Mich.]

APPENDIX S

Michigan Court Rules of 1985

Chapter 2. Civil Procedure

Subchapter 2.600 Judgments and Orders; Postjudgment Proceedings

RULE 2.603 DEFAULT AND DEFAULT JUDGMENT

<Text of rule effective until January 1, 2005>

(A) Entry; Notice; Effect.

(1) If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and that fact is made to appear by affidavit or otherwise, the clerk must enter the default of that party.

(2) Notice of the entry must be sent to all parties who have appeared and to the defaulted party. If the defaulted party has not appeared, the notice to the defaulted party may be served by personal service, by ordinary first-class mail at his or her last known address or the place of service, or as otherwise directed by the court.

(a) In the district court, the court clerk shall send the notice.

(b) In all other courts, the notice must be sent by the party who sought entry of the default. Proof of service and a copy of the notice must be filed with the court.

(3) Once the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court in accordance with subrule (D) or MCR 2.612.

(B) Default Judgment.

(1) *Notice of Request for Judg*ment.

(a) A party seek·ng a default judgment must give notice of the request for judgment to the defaulted party

(i) if the party against whom the judgment is sought has appeared in the action;

(ii) if the request for entry of judgment seeks relief different in kind from, or greater in amount than, that stated in the pleadings; or

(iii) if the pleadings do not state a specific amount demanded.

(b) The notice required by this subrule must be served at least 7 days before entry of the requested judgment.

(c) If the defaulted party has appeared, the notice may be given in the manner provided by MCR 2.107. If the defaulted party has not appeared, the notice may be served by personal service, by ordinary first-class mail at the defaulted party's last known address or the place of service, or as otherwise directed by the court.

(d) If the default is entered for failure to appear for a scheduled trial, notice under this subrule is not required.

(2) *Default Judgment Entered by Clerk.* On request of the plaintiff supported by an affidavit as to the amount due, the clerk may sign and enter judgment for that amount and costs against the defendant, if

(a) the plaintiffs claim against a defendant is for a sum certain or for a sum that can by computation be made certain,

(b) the default was entered because the defendant failed to appear, and

(c) the defaulted defendant is not an infant or incompetent person.

The clerk may not enter or record a judgment based on a note or other written evidence of indebtedness until the note or writing is filed with the clerk for cancellation, except by special order of the court.

(3) *Default Judgment Entered by Court.* In all other cases the party entitled to a judgment by default must apply to the court for the judgment.

(a) A judgment by default may not be entered against a minor or an incompetent person unless the person is represented in the action by a conservator, guardian ad litem, or other representative.

(b) If, in order for the court to enter judgment or to carry it into effect, it is necessary to

(i) take an account,

(ii) determine the amount of damages,

(iii) establish the truth of an allegation by evidence, or

(iv) investigate any other matter,

the court may conduct hearings or order references it deems necessary and proper, and shall accord a right of trial by jury to the parties to the extent required by the constitution.

(4) *Notice of Entry of Judgment.* The court clerk must promptly mail notice of entry of a default judgment to all parties. The notice to the defendant shall be mailed to the defendant's last known address or the address of the place of service. The clerk must keep a record that notice was given.

(C) Nonmilitary Affidavit. Nonmilitary affidavits required by law must be filed before judgment is entered in actions in which the defendant has failed to appear.

(D) Setting Aside Default.

(1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

(2) Except as provided in MCR 2.612, if personal service was made on the party against whom the default was taken, the default, and default judgment if one has been entered, may only be set aside if the motion is filed

(a) before entry of judgment, or

(b) if judgment has been entered, within 21 days after the default entered.

(3) In addition, the court may set aside an entry of default and a judgment by default in accordance with MCR 2.612.

(4) An order setting aside the default judgment must be conditioned on the party against whom the default was taken paying the taxable costs incurred by the other party in reliance on the default, except as prescribed in MCR 2.625(D). The order may also impose other conditions the court deems proper, including a reasonable attorney fee.

(E) Application to Parties Other Than Plaintiff. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff or a party who pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of MCR 2.601(B).

CREDIT(S)

[Effective March 1, 1985; amended November 17, 1994, effective January 1, 1995, 447 Mich.]

authorize mail service if the state statute or rule of court provided for service by mail.

5 The Court's proposal authorized service by the Marshals Service in other situations. This authority, however, was not seen as thwarting the underlying policy of limiting the use of marshals. See Appendix II, at 16, 17 (Advisory Committee Note).

6 Appendix I, at 2 (letter of Assistant Attorney General Robert A. McConnell).

7 The provisions of H.R. 7154 conflict with 28 U.S.C. 569(b) because the latter is a broader command to marshals to serve all federal court process. As a later statutory enactment, however, H.R. 7154 supersedes 28 U.S.C. 569(b), thereby achieving the goal of reducing the role of marshals.

8 Proposed Rule 4(d)(8) provided that "Service . . . shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant." This provision reflects a desire to preclude default judgments on unclaimed mail. See Appendix II, at 7 (Report of the Committee on Rules of Practice and Procedure).

The interpretation of Rule 4(d)(8) to require a refusal of delivery in order to have a basis for a default judgment, while undoubtedly the interpretation intended and the interpretation that reaches the fairest result, may not be the only possible interpretation. Since a default judgment can be entered for defendant's failure to respond to the complaint once defendant has been served and the time to answer the complaint has run, it can be argued that a default judgment can be obtained where the mail was unclaimed because proposed

subsection (j), which authorized dismissal of a complaint not served within 120 days, provided that mail service would be deemed made "on the date on which the process was accepted, refused, or returned as unclaimed" (emphasis added).

9 *See* p. 15 infra.

10 Proponents of the California system of mail service, in particular, saw no reason to supplant California's proven method of mail service with a certified mail service that they believed likely to result in default judgments without actual notice to defendants. See House Report No. 97-662, at 3 (1982).

11 The parties may, of course, stipulate to service, as is frequently done now.

12 While return of the letter as unclaimed was deemed service for the purpose of determining whether the plaintiffs action could be dismissed, return of the letter as unclaimed was not service for the purpose of entry of a default judgment against the defendant. See note 8 supra.

13 The law governing the tolling of a statute of limitation depends upon the type of civil action involved. In a diversity action, state law governs tolling. *Walker v. Armco Steel Corp.*, 446 U.S. 740 (1980)- In Walker, plaintiff had filed his complaint and thereby commenced the action under Rule 3 of the Federal Rules of Civil Procedure within the statutory period. He did not, however, serve the summons and complaint until after the statutory period had run. The Court held that state law (which required both filing and service within the statutory period) governed, barring plaintiffs action.

In the federal question action, the courts of appeals have generally held that Rule 3 governs, so that the filing of the complaint tolls a statute of limitation. *United States v. Wahl*, 538 F.2d 285 (6th Cir. 1978); *Windbrooke Dev. Co. v. Environmental Enterprises Inc- of Fla.*, 524 F.2d 461 (5th Cir.

1975); *Metropolitan Paving Co. v. International Union of Operating Engineers*, 439 F.2d 300 (10th Cir. 1971); *Moore Co. v Sid Richardson Carbon & Gasoline Co.*, 347 F.2d 921 (8th Cir.), cert. denied, 383 U.S. 925, reb. denied, 384 U.S. 914 (1965); *Hoffman v. Halden*, 268 F.2d 280 (9th Cir. 1959). The continued validity of this line of cases, however, must be questioned in light of the *Walker* case, even though the Court in that case expressly reserved judgment about federal question actions, see *Walker v. Armco Steel Corp.*, 446 U.S. 741, 751 n.11 (1980).

14 The same result obtains even if service occurs within the 120 day period, if the service occurs after the statute of limitation has run.

15 See p. 19 infra.

16 See p. 17 infra.

17 Rule 45(c) provides that "A subpoena may be served by the marshal, by his deputy, or by any other person who is not a party and is not less than 18 years of age."

18 Some litigators have voiced concern that there may be situations in which personal service by someone other than a member of the Marshals Service may present a risk of injury to the person attempting to make the service. For example, a hostile defendant may have a history of injuring persons attempting to serve process. Federal judges undoubtedly will consider the risk of harm to private persons who would be making personal service when deciding whether to order the Marshals Service to make service under Rule 4(c)(2)(B)(iii).

19 The methods of service authorized by Rule 4(c)(2)(C) may be invoked by any person seeking to effect service. Thus, a nonparty adult who receives the summons and complaint for service under Rule 4(c)(1) may serve them personally or by mail in the manner authorized by Rule 4(c)(2)(C)(ii). Similarly, the Marshals Service may utilize the mail

service authorized by Rule 4(c)(2)(C)(ii) when serving a summons and complaint under Rule 4(c)(2)(B)(i)(iii). When serving a summons and complaint under Rule 4(c)(2)(B)(ii), however, the Marshals Service must serve in the manner set forth in the court's order. If no particular manner of service is specified, then the Marshals Service may utilize Rule 4(c)(2)(C)(ii). It would not seem to be appropriate, however, for the Marshals Service to utilize Rule 4(c)(2)(C)(ii) in a situation where a previous attempt to serve by mail failed. Thus, it would not seem to be appropriate for the Marshals Service to attempt service by regular mail when serving a summons and complaint on behalf of a plaintiff who is proceeding in forma pauperis if that plaintiff previously attempted unsuccessfully to serve the defendant by mail.

20 To obtain service by personnel of the Marshals Service or some-one specially appointed by the court, a plaintiff who has unsuccessfully attempted mail service under Rule 4(c)(2)(C)(ii) must meet the conditions of Rule 4(c)(2)(B)—for example, the plaintiff must be proceeding in *forma pauperis*.

21 For example, the sender must state the date of mailing on the form. If the form is not returned to the sender within 20 days of that date, then the plaintiff must serve the defendant in another manner and the defendant may be liable for the costs of such service. Thus, a defendant would suffer the consequences of a misstatement about the date of mailing.

22 See p. 12 supra.

23 The 120 day period begins to run upon the filing of each complaint. Thus, where a defendant files a cross-claim against the plaintiff, the 120 day period begins to run upon the filing of the cross-complaint, not upon the filing of the plaintiffs complaint initiating the action.

24 The person who may move to dismiss can be the putative defendant (i.e., the person named as defendant in the

complaint filed with the court) or, in multi-party actions, another party to the action. (If the putative defendant moves to dismiss and the failure to effect service is due to that person's evasion of service, a court should not dismiss because the plaintiff has "good cause" for not completing service.)

25 See Cal.Civ.Pro. § 415.30 (West 1973).

26 See p. 16 supra.

CONVENTIONS

CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

The States signatory to the present Convention,

Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time,

Desiring to improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.

This Convention shall not apply where the address of the person to be served with the document is not known.

CHAPTER I—JUDICIAL DOCUMENTS

Article 2

Each contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other contracting States and to proceed in conformity with the provisions of articles 3 to 6.

Each State shall organize the Central Authority in conformity with its own law.

Article 3

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalization or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

Article 4

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.

Article 5

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either—

(a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

(b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

Article 6

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

The certificate shall be forwarded directly to the applicant.

Article 7

The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or

in one of the official languages, of the State in which the documents originate.

The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

Article 8

Each contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents.

Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.

Article 9

Each contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another contracting State which are designated by the latter for this purpose.

Each contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.

Article 10

Provided the State of destination does not object, the present Convention shall not interfere with—

(a) the freedom to send judicial documents, by postal channels, directly to persons abroad,

(b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,

(c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

Article 11

The present Convention shall not prevent two or more contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding articles and, in particular, direct communication between their respective authorities.

Article 12

The service of judicial documents coming from a contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.

The applicant shall pay or reimburse the costs occasioned by—

(a) the employment of a judicial officer or of a person competent-under the law of the State of destination,

(b) the use of a particular method of service.

Article 13

Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.

It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject matter of the action or that its internal law would not permit the action upon which the application is based.

The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

Article 14

Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

Article 15

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that—

(a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

(b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled—

(a) the document was transmitted by one of the methods provided for in this Convention,

(b) a period of time of not less than six months, considered adequate by the judge in the particular case,

has elapsed since the date of the transmission of the document,

(c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled—

(a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and

(b) the defendant has disclosed a prima facie defense to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This article shall not apply to judgments concerning status or capacity of persons.

CHAPTER II—EXTRAJUDICIAL DOCUMENTS

Article 17

Extrajudicial documents emanating from authorities and judicial officers of a contracting State may be transmitted for the purpose of service in another contracting State by the methods and under the provisions of the present Convention.

CHAPTER III—GENERAL CLAUSES

Article 18

Each contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence.

The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 19

To the extent that the internal law of a contracting State permits methods of transmission, other than those provided for in the preceding articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

Article 20

The present Convention shall not prevent an agreement between any two or more contracting States to dispense with—

(a) the necessity for duplicate copies of transmitted documents as required by the second paragraph of article 3,

(b) the language requirements of the third paragraph of article 5 and article 7,

(c) the provisions of the fourth paragraph of article 5,

(d) the provisions of the second paragraph of article 12.

Article 21

Each contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following—

(a) the designation of authorities, pursuant to articles 2 and 18,

(b) the designation of the authority competent to complete the certificate pursuant to article 6,

(c) the designation of the authority competent to receive documents transmitted by consular channels, pursuant to article 9.

Each contracting State shall similarly inform the Ministry, where appropriate, of—

(a) opposition to the use of methods of transmission pursuant to articles 8 and 10,

(b) declarations pursuant to the second paragraph of article 15 and the third paragraph of article 16,

(c) all modifications of the above designations, oppositions and declarations.

Article 22

Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at The Hague on 17th July 1905 [99 BFSP 990], and on 1st March 1954 [286 UNTS 265], this Convention shall replace as between them articles 1 to 7 of the earlier Conventions.

Article 23

The present Convention shall not affect the application of article 23 of the Convention on civil procedure signed at The

Hague on 17th July 1905, or of article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954.

These articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

Article 24

Supplementary agreements between parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention, unless the Parties have otherwise agreed.

Article 25

Without prejudice to the provisions of articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the contracting States are, or shall become, Parties.

Article 26

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the

first paragraph of article 27, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in article 26, and to the States which have acceded in accordance with article 28, of the following—

(a) the signatures and ratifications referred to in article 26;

(b) the date on which the present Convention enters into force in accordance with the first paragraph of article 27;

(c) the accessions referred to in article 28 and the dates on which they take effect;

(d) the extensions referred to in article 29 and the dates on which they take effect;

(e) the designations, oppositions and declarations referred to in article 21;

(f) the denunciations referred to in the third paragraph of article 30.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed the present Convention.

DONE at The Hague, on the 15th day of November, 1965, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of The States represented at the Tenth Session of the Hague Conference on Private International Law.

[Signatures omitted.]

Service of Documents Convention

ANNEX TO THE CONVENTION

Forms *

* These forms may be obtained from the Offices of United States Marshals.

REQUEST

FOR SERVICE ABROAD OF JUDICIAL OR

EXTRAJUDICIAL DOCUMENTS

Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

Identity and address of the applicant

Address of receiving authority

The undersigned applicant has the honour to transmit—in duplicate—the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.,

(identity and address) .....

.....

(*a*) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention*.

(*b*) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5)*:

.....

(*c*) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*.

The authority is requested to return or to have returned to the applicant a copy of the documents—and of the annexes*—with a certificate as provided on the reverse side.

List of documents

.....

Done at ....., ...

The .....

Signature and/or stamp.

* Delete if inappropriate.

Reverse of the request

CERTIFICATE

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,

1) that the document has been served *

—the (date) .....

—at (place, street, number) .....

—in one of the following methods authorized by article 5—

(*a*) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention*.

(*b*) in accordance with the following particular method *: .....

(*c*) by delivery to the addressee, who accepted it voluntarily*.

The documents referred to in the request have been delivered to:

—(identity and description of person) .....

—relationship to the addressee (family, business or other) .....

2) that the document has not been served, by reason of the following facts*:

.....

.....

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement *.

Annexes

Documents returned:.....

.....

.....Done at .....the .....

In appropriate cases, documents establishing the service:

.....

.....

..... Signature and/or stamp.

*Delete if inappropriate.

SUMMARY OF THE DOCUMENT TO BE SERVED

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, the 15th of November 1965.

(article 5, fourth paragraph)

Name and address of the requesting authority:

.....

Particulars of the parties*:

.....

JUDICIAL DOCUMENT **

Nature and purpose of the document:

.....

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:

.....

Date and place for entering appearance**:

.....

Court which has given judgment **:

.....

Date of judgment **:

.....

Time limits stated in the document**:

.....

EXTRAJUDICIAL DOCUMENT **

Nature and purpose of the document:

.....

Time limits stated in the document **:

.....

* If appropriate, identity and address of the person interested in the transmission of the document.

**Delete if inappropriate.

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters. Done at The Hague November 15, 1965; entered into force for the United States February 10, 1969. 20 UST 361; TIAS 6638; 658 UNTS 163. States which are parties:

Antigua and Barbuda [1]
Barbados [1a]
Belgium [2]
Botswana [2a2]B1 [So in original.]
Canada [3]
China [3a]
Cyprus [3b]
Czech Republic [3c]
Denmark [4]
Egypt [5]
Estonia [5a]
Finland [6]
France [7]
Federal Republic of Germany [7a]
Greece [7b]
Ireland [7c]
Israel [9]
Italy [6a]
Japan [9]
Latvia
Luxembourg [9a]
Malawi [10]
Netherlands [10a]
Norway [11]
Pakistan [11a]
Poland [11b]
Portugal [11a]

Seychelles [11d]
Slovak Republic [11e]
Spain [11f]
Sweden [12]
Switzerland [12a]
Turkey [13]
United Kingdom [14]
United States [15]
Venezuela [16]

[1] *Notification in conformity with Article 31 of the Convention*

By note of 1 May 1985, received at the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 17 May 1985, the Government of Antigua and Barbuda informed the Ministry of Foreign Affairs it does consider itself bound by the abovementioned Convention, declared applicable to Antigua by the Government of the United Kingdom of Great Britain and Northern Ireland on 20 May 1970.

Notification in conformity with Article 31, letter e, of the Convention

The Government of Antigua and Barbuda informed the Ministry of Foreign Affairs of the Kingdom of the Netherlands by Note of 2 May 1986 that as the authority referred to in Article 21 has been designated:

The Registrar-Eastern Caribbean Supreme Court.

Notification in conformity with Article 31, letter e, of the Convention

Rectification of the Notifications *Judicial and Extrajudicial Documents Nos 2 and 3/ 1987* of 14 July 1987 and 28 August 1987.

The competent authorities under Article 21 of the abovementioned Convention, designated by the Government of Antigua and Barbuda, are:

a) The Governor-General, Antigua and Barbuda;

b) The Registrar of the High Court of Antigua and Barbuda, St. John's, Antigua.

The Hague, 18 November 1987

Notification in conformity with Article 31, paragraph e, of the Convention

Referring to the extension of the Convention in 1970 to Hong Kong and the designation of the Central Authority for Hong Kong the Government of the United Kingdom of Great Britain and Northern Ireland informed the Ministry of Foreign Affairs of the Kingdom of the Netherlands by letter of 3 May 1984 that "the Colonial Secretary of Hong Kong" has been re-designated as "the Chief Secretary of Hong Kong". Requests for documents to be served in Hong Kong should be addressed accordingly.

[1a] With the following declaration:

"The Government of Barbados has designated the Registrar of the Supreme Court of Barbados as the Central Authority for the purposes of Articles 2 and 18, in accordance with the provisions of Article 21 of the Convention."

[2] With the following declaration:

"1 In conformity with the first paragraph of Article 2 of the Convention, the Ministry of Justice, Administration de la Legislation, Place Poelaert, 4, 1.000 Brussels is designated as the Central Authority;

"2 The Ministry of Justice is also designated as the competent authority to receive documents forwarded by the channels provided for in the first paragraph of Article 9 of the Convention;

"3 The Belgian Government is opposed to use being made within its territory of the freedom to effect service provided for in the first paragraph of Article 8;

"4 The Belgian Government declares that it will avail itself of the provision contained in the second paragraph of Article 15;

"5 In conformity with the third paragraph of Article 16, the Belgian Government declares that the applications mentioned in the second paragraph of Article 16 will not be entertained if they are filed after the expiration of a period of one year following the date of the judgment;

"6 The Belgian Government believes it should draw attention to the fact that any request for the service of documents made under sections a) or b) of the first paragraph of Article 5 requires the agency of a process-server (huissier de justice) and that the resulting costs should be reimbursed in conformity with Article 12 of the Convention."

[2a] With the following declaration:

"1 Pursuant to the first paragraph of Article 2 of the Convention the Minister of State in the Office of the President of the Republic of Botswana has been designated the Central Authority to receive re-quests for service from other contracting states.

"2 The Registrar of the High Court of Botswana is designated as the authority competent to complete the certificate in the form of the Model annexed to the Convention pursuant to the first paragraph of Article 6.

"3 In accordance with the provisions of Article 9 of the Convention the Minister of State in the Office of the President is designated as the receiver of process sent through Consular channels.

"4 It is declared that the Government of Botswana objects to the method of service referred to in subparagraphs (b) and (c) of Article 10.

"5 It is declared that a judge of the High Court of Botswana may give judgment if all the conditions specified in paragraph 2 of Article 15 are fulfilled."

All documents forwarded for service must be in duplicate and written in or translated into the English language.

[3] *Notification in conformity with Article 31, paragraph c, of the Convention*

Canada deposited its instrument of accession to the above-mentioned Convention with the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 26 September 1988 in accordance with Article 28, paragraph 1.

The States which have ratified the Convention were notified by the Dutch Government of the accession on 29 September 1988. Since none of these States raised an objection to the accession within the period of six months specified in Article 28, paragraph 2, the said accession became perfect on 10 April 1989.

In accordance with Article 28, paragraph 3, the provisions of the Convention will enter into force for Canada on 1 May 1989. A copy of a document transmitted by Canada and containing the designations and declarations referred to in Article 21 of the Convention is attached to this Notification.

CANADA

A. *Transmission and execution of requests for service.*

1. Central Authority
(Article 2 and Article 18, paragraph 3)
comment: To save time, requests should be forwarded directly to the Central Authority of the province or territory concerned. They

may, however, also be forwarded to the Federal Central Authority which will transmit them to the relevant Central Authority.

Alberta

name: Attorney-General for Alberta
Att: Executive Director—Court Services
address: 9833-109th Street
Edmonton, Alberta
Canada T5K 2E8
telephone: (403) 427-4992

British Columbia

name: Ministry of the Attorney-General for British Columbia
Office of the Deputy Minister
address: Fifth Floor, 910 Government Street
Victoria, British Columbia
Canada V8V 1X4
telephone: (604) 387-5211

Manitoba

name: Attorney-General for Manitoba
c/o Director—Civil Legal Services
address: Woodsworth Building
6th Floor
405 Broadway
Winnipeg, Manitoba
Canada, R3C OV8
telephone: (204) 945-2847

New Brunswick

name: Attorney-General for New Brunswick
address: P.O. Box 6000
Fredericton, New Brunswick
Canada, E3B 5H1
telephone: (506) 453-2208

Newfoundland

name:	Department of Justice
address:	Confederation Building St. John's, Newfoundland Canada A1C 5T7
telephone:	(709) 576-2869

Nova Scotia

name:	Attorney General of Nova Scotia Legal Services Division
address:	P.O. Box 7 Halifax, Nova Scotia B3J 2L6
telephone:	(902) 424-4024

Ontario

name:	Ministry of the Attorney General for Ontario Reciprocity Office: Civil Law Division
address *:	18 King Street East Toronto, Ontario Canada M5C 105
telephone *:	(416) 965-2570

* So in original. Address subsequently changed to:

address:	393 Main Street Box 1208 Haileybury, Ontario Canada POJ 1K0
telephone:	(705) 672-33951

Prince Edward Island

name:	Attorney General of Prince Edward Island Office of the Deputy Minister
address:	P.O. Box 2000 Charlottetown, Prince Edward Island Canada CIA 7N8
telephone:	(902) 368-4570

Quebec

name:	Ministre de la Justice du Quebec
	a/s Le service juridique
address:	1200 route de 1'Rglise
	5eme etage
	Ste-Foy, Quebec
	Canada G1V 4M1
telephone:	(418) 643-1436

Saskatchewan

name:	Minister of Justice for Saskatchewan
	Att. of Director of Sheriff Services
address:	1874 Scarth St., 10th Floor
	Regina, Saskatchewan
	Canada S4P 3V7
telephone:	(306) 787-5488

Yukon

name:	Director of Court Services
address:	Department of Justice,
	Box 2703
	Whitehorse, Yukon Y1A 2C6
telephone:	(403) 667-5942

Northwest Territories

name:	Deputy Minister of Justice
	Government of the Northwest Territories
address:	Box 1320
	Yellowknife, Northwest Territories
	Canada X1A 2L9
telephone:	(613) 995-0119

Canada

name:	Director, Legal Advisory Division
	Department of External Affairs
address:	125 Sussex Drive
	Ottawa, Ontario
	Canada K1A 0G2
telephone:	(613) 995-0119

Payment of Service Costs

The payment of Service costs should be made to:

Alberta:	Provincial Treasurer of Alberta
British Columbia:	Minister of Finance of British Columbia
Prince Edward Island:	Minister of Finance of Prince Edward Island
Manitoba:	Minister of Finance of Manitoba
New Brunswick:	Minister of Finance of New Brunswick
Nova Scotia:	Minister of Finance of Nova Scotia
Ontario:	Treasurer of Ontario
Quebec:	"Ministre des Finances du Quebec"
Saskatchewan:	Department of Justice of Saskatchewan—Sheriff Services
Newfoundland:	Newfoundland Exchequer Account
Yukon:	Territorial Treasurer of the Government of Yukon
Northwest Territories:	Government of the Northwest Territories

2. Methods of service employed by the Central Authority (Article 5)

2.1 Formal service
(Article 5, paragraph 1, sub-paragraph a)
In Canada, service will be effected according to the methods of service prescribed by the laws in force in each province and territory.

The normal procedure that will be used by central authorities in Canada is personal service made by a sheriff or deputy sheriff or a *huissier* in Quebec, on an individual or on a corporation by handing a copy of the document to the defendant in person, wherever he

may be, or to the President, Chairman or other Chief Officer of a corporation at the place of business.

Service may also be effected by leaving a copy of the document with a person of a reasonable age at the defendant's domicile or residence.

Where service is made on a corporation, provincial laws usually provide for service on a director or senior officer of the corporation or, in some cases, on a registered agent or on a responsible person at the registered office of the corporation.

2.2 Informal delivery (Article 5, paragraph 2)

The practice of informal delivery ("par simple remise") of judicial or extra-judicial documents is not known in Canada.

2.3 Service by a particular method (Article 5, paragraph 1, sub-paragraph b)

In Alberta, New Brunswick and Ontario, service will be made by certified mail at the option of the requesting party. In Ontario, the Central Authority will serve by any form of mail, at the option of the requesting party.

2.4 Translation requirements (Article 5, paragraph 3)

For both Formal service and Service by a particular method, translation requirements will depend on the province or territory concerned.

For Alberta, British Columbia, Newfoundland, Nova Scotia, Prince Edward Island, Saskatchewan, all documents must be written in or translated into English. For Ontario, Manitoba, and the Northwest Territories, all documents must be written in or translated into English or French.

For New Brunswick and the Yukon, all documents must be written in or translated into English or French. The Central Authority of New Brunswick or the Yukon may reserve the right to require documents to be translated into English or French depending on the language understood by the addressee.

For Quebec, translation will be required in all cases where the recipient does not understand the language in which the document is written. All documents which commence actions must be translated. Summary translation of all other documents is acceptable if the recipient agrees. Translation is to be done into the French language; however, the Quebec central authority may, upon request, allow a translation in English at the condition that the recipient understands this language. Costs (Article 12, paragraph 2, subparagraph a)

Costs for execution of service will be of $50: Can.

3. Authority competent to complete the certificate of service (Article 6)

In addition to the Central Authorities, the sheriffs, deputy-sheriffs, sub-sheriffs, clerk of the court or his/her deputy for the judicial district (except in Manitoba where there are no judicial districts) in which the person is to be served or the *huissiers* (only in Quebec) are competent to complete the certificate of service.

B. *Forwarding of requests for service to the Central Authority of another Contracting State*

Forwarding Authorities (Article 3)

Requests for service to Central Authorities of other States may be transmitted by:

—The Attorney General for Canada

—The Attorneys General or the Ministry of Attorney General or Minister of Justice of a province or a territory—as the case may be.

—Clerks of the courts and their deputies for a judicial or a court district

—The members of the law societies of all provinces and territories

—The member of the Board of Notaries of the Province of Quebec (for non-litigious matters only).

—Local registrars

—The huissiers and sheriffs

—The prothonotaries and deputy prothonotaries

—The "Percepteur des pensions alimentaires" in Quebec

CANADA

I Transmission through consular or diplomatic channels (Articles 8 and 9)

A Acceptance

On accession, Canada has not declared that it objects to service by consular or diplomatic channels on its territory. Receiving authority (Article 9, paragraph 1)

The Central Authorities in Canada designated in accordance with Articles 2 and 18 of the Convention are competent to receive requests for service transmitted by a foreign consul within Canada.

B. Forwarding to the Contracting States

Canada does not object to service by consular channels of Canadian documents abroad providing that the recipient accepts this method of service.

II Transmission through postal channels (Article 10, sub-paragraph a)

A Acceptance

Canada does not object to service by postal channels.

B. Forwarding to other contracting States

Canadian law allows the use of postal channels to serve Canadian documents to persons abroad.

III Service through judicial officers, notably "*huissiers*", etc. of the requested State (Article 10, sub-paragraphs b) and e))

On accession, Canada has not declared to object to methods of service of Article 10, sub-paragraphs b) and c).

IV *Other direct channels (Article 11); special agreements (Articles 24 and 25)*

Canada is party to bilateral conventions on civil procedure with the following States:

Austria	Canada Treaty Series, 1935, n° 16
Belgium	Canada Treaty Series, 1928, n° 16
Czechoslovakia	Canada Treaty Series, 1928, n° 1'7
Denmark	Canada Treaty Series, 1936, n° 4
Finland	Canada Treaty Series, 1936, n° 5
France	Canada Treaty Series, 1928, n° 15
Germany	Canada Treaty Series, 1935, n° 11
Greece	Canada Treaty Series, 1938, n° 11
Hungary	Canada Treaty Series, 1939, n° 6
Iraq	Canada Treaty Series, 1938, n° 12
Italy	Canada Treaty Series, 1938, n° 14
Netherlands	Canada Treaty Series, 1936, n° 2

Norway	Canada Treaty Series, 1935, n° 15
Poland	Canada Treaty Series, 1935, n° 18
Portugal	Canada Treaty Series, 1935, n° 17
Spain	Canada Treaty Series, 1935, n° 12
Sweden	Canada Treaty Series, 1935, n° 13
Turkey	Canada Treaty Series, 1935, n° 19
Yugoslavia	Canada Treaty Series, 1939, n° 4

CANADA

GUARANTEES UNDER THE CONVENTION

Declarations made pursuant to Articles 15, paragraph 1 or 16, paragraph 3.

1. *Stays of entry* (Article 15, paragraph 2)

Canada declares that the judges may give judgment under the conditions stated in Article 15 of the Convention.

2. *Relief from expiration of the period of time for appeal* (Article 16, paragraph 3)

Canada declares that an application filed under Article 16 of the Convention will not be entertained if it is filed after the expiration of one year following the date of the judgment, except in exceptional cases determined by the rules of the Court seized of the matter.

[3a] The People's Republic of China deposited its instrument of accession with the Ministry of Foreign Affairs of the Kingdom of the Netherlands on May 6, 1991, in accordance with Article 28, paragraph 1, of the Convention.

The instrument of accession contains the following declarations:

"1. to designate according to Article 2 and Article 9 of the Convention the Ministry of Justice of the People's

Republic of China as the Central Authority and the authority competent to receive documents transmitted by foreign States through consular channels. "The communication address is:

Bureau of International Judicial Assistance
Ministry of Justice of the People's Republic of China
10, Chaoyangmen Nandajie, Chaoyang District, Beijing, P.C. 100020 People's Republic of China

"2. to declare according to the second paragraph of Article 8 that the means of service stipulated in the first paragraph of that Article may be used within the territory of the People's Republic of China only when the document is to be served upon a national of the State in which the documents originate.

"3. to oppose the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention.

"4. to declare in accordance with the second paragraph of Article 15 of the Convention that if all the conditions provided in that paragraph are fulfilled, the judge, notwithstanding the provisions of the first paragraph of that Article, may give judgment even if no certificate of service or delivery has been received.

"5. to declare in accordance with the third paragraph of Article 16 of the Convention that the application for relief from the effects of the expiration of the time for appeal shall not be entertained except that it is filed within one year following the date of the judgment."

(courtesy translation)

In accordance with the terms of Article 28, paragraph 1, of the Convention any State not represented at the Tenth Session of the Hague Conference on private international law may accede to the present Convention after it has entered into

force in accordance with the first paragraph of Article 27 (viz.: 10 February 1969).

In accordance with Article 28, paragraph 2, the Convention shall enter into force for the People's Republic of China in the absence of any objection from a State which has ratified the Convention (at present: Belgium, Denmark, Egypt, Finland, France, the Federal Re-public of Germany, Greece, Israel, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, Norway, Portugal, Spain, Sweden, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America) before such deposit, notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession. For practical reasons this six months' period in this case is running from 1 June 1991 till 1 December 1991.

Notification in conformity with Article 31 of the Convention

The States which ratified the Convention were notified of the accession by the Dutch Government on 17 May 1991. Since none of these States raised an objection to the accession within the period of six months specified in Article 28, paragraph 2, the said accession became perfect on 1 December 1991.

The provisions of the Convention will enter into force for the People's Republic of China on 1 January 1992 in accordance with Article 28, paragraph 3.

"The Embassy of the People's Republic of China in the Kingdom of the Netherlands

No. He Wai Fa (97)-52 (Translation)

The Hague, June 10, 1997

Your Excellency

In accordance with the Joint Declaration of the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong signed on 19 December 1984, the People's Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. Hong Kong will, with effect from that date, become a Special Administrative Region of the People's Republic of China and will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government of the People's Republic of China.

In this connection, I am instructed by the Minister of Foreign Affairs of the People's Republic of China to make the following notification:

> The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters done on 15 November 1965 (hereinafter referred to as the "Convention"), by which the Government of the Kingdom of the Netherlands is designated as the depository, to which the Government of the People's Republic of China deposited its instrument of accession on 3 May 1991, will apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. The Government of the People's Republic of China also makes the following declarations:
>
> 1. In accordance with Paragraph 2 of Article 8 of the Convention, it declares that the means of service referred to in Paragraph 1 of this Article may be used within the Hong Kong Special Administrative Region only when the document is to be served upon a national of the state in which the document originates.

2. In accordance with Article 18 of the Convention, it designates the Administrative Secretary of the Government of the Hong Kong Special Administrative Region as the Other Authority in the Hong Kong Special Administrative Region.

3. It designates the Registrar of the High Court of the Hong Kong Special Administrative Region as the authority for the purpose of Article 6 and 9 of the Convention.

4. With reference to the provisions of Sub-paragraphs (b) and (c) of Article 10 of the Convention, documents for service through official channels will be accepted in the Hong Kong Special Administrative Region only by the Central Authority or Other Authority designated, and only from judicial, consular or diplomatic officers of other Contracting States.

The Government of the People's Republic of China will assume responsibility for the international rights and obligations arising from the application of the Convention to the Hong Kong Special Administrative Region. . . ."

3b *Notification in conformity with Article 31, paragraph c, of the Convention.*

The Republic of Cyprus deposited its instrument of accession with the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 26 October 1982 in accordance with Article 28, paragraph 1, of the Convention.

In accordance with Article 28, paragraph 3, the provisions of the Convention will enter into force for the Republic of Cyprus on 1 June 1983.

The States which have ratified the Convention were notified by the Netherlands Government of the accession on 3 November 1982. Since none of these States raised an objection to the accession within the period of six months specified

in Article 28, paragraph 2, the said accession became perfect on 15 May 1983.

Referring to the accession of Cyprus to the above-mentioned Convention the Embassy of Turkey at The Hague addressed a Note dated 6 April 1983 to the Ministry of Foreign Affairs of the Kingdom of the Netherlands. [See note 13.]

Notification in conformity with Article 31, paragraph e, of the Convention

In conformity with Article 21 of the Convention the Government of Cyprus informed the Ministry of Foreign Affairs of the Kingdom of the Netherlands by Note dated 5 January 1984 of the designation of the following authorities and made the following declarations:

"(a) *Article 2*:

Designation of Central Authority which will undertake to receive requests for service:—Ministry of Justice.

(b) *Article 6*:

Designation of the authority competent to complete the certificate of Service:—Ministry of Justice.

(c) *Article 9*:

Designation of the authority competent to receive documents transmitted by Consular Channels:—Ministry of Justice.

(d) *Articles 8 and 10*:

No opposition to the methods of transmission of documents provided by these articles.

(e) *Article 15*:

Declaration that judgement may be given if all conditions laid down in paragraph 2 are fulfilled.

(f) *Article 16*:

Declaration pursuant to paragraph 3 that the application will not be entertained if it is filed after the expiration of one year from the date of the judgement

(g) *Article 18*:

Designation of other authorities in addition to the Central Authorities.

The Courts of the Republic. Competence: Service of documents through their Registries."

3c *Notification in conformity with Article 31, paragraphs c and e, of the Convention*

By notification dated January 28, 1993 the Czech Republic communicated the following: "In accordance with the valid principles of international law and to the extent determined by it, the Czech Republic, as a successor state created as a result of the division of the Czech and Slovak Federal Republic, considers itself bound, as of January 1, 1993, i.e. the date of the division of the Czechoslovak federation, by multilateral international treaties to which the Czech and Slovak Federal Republic was a party on that date, including reservations and declarations to their provisions made earlier by Czechoslovakia", which are as follow:

Translation

—in accordance with Article 8 of the Convention, within the territory of the Socialist Republic of Czechoslovakia judicial documents may not be served directly through the diplomatic or consular agents of another contracting State unless the document is to be served upon a national of the State in which the documents originate;

—in accordance with Article 10 of the Convention, within the territory of the Socialist Republic of Czechoslovakia judicial documents may not be served by another contracting

State through postal channels nor through the judicial officers, officials or other competent persons;

—in accordance with Article 15, paragraph 2 of the Convention, Czechoslovakian judges may give judgement even if the conditions pursuant to Article 15, paragraph 1, have not been fulfilled;

—the provisions of Article 29 of the Convention concerning the extension of the Convention to territories for the international relations of which the contracting States are responsible are at variance with the Declaration of the United Nations General Assembly on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960, and for this reason the Socialist Republic of Czechoslovakia does not consider itself to be bound by these provisions.

A copy of the original text of the declaration is attached.

By Note dated 31 March 1982 and received at the Ministry of Foreign Affairs on 1 April 1982, the Embassy of the Czechoslovak Socialist Republic communicated the following with regard to the above-cited declaration concerning Article 29 of the Convention:

"This declaration cannot be considered a reserve in view of the fact that it does not follow other purposes than a similar declaration made at the ratification of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, though a different formulation was used.

"By this declaration the Czechoslovak Socialist Republic expresses its disagreement of principle with the status of colonies and other dependent territories which is in contradiction with the Declaration of the United Nations General Assembly on the Granting of Independence to Colonial Countries and Peoples of December 14, 1960.

"The Czechoslovak Socialist Republic, however, has no intention to exclude the application of the Convention on

the relations with the territories on which the use of the Convention has been extended in accordance with its Art. 29".

The States which have ratified the Convention were notified by the Netherlands Government of the accession on 26 October 1981. Since none of these States raised an objection to the accession within the period of six months specified in Article 28, paragraph 2, the said accession became perfect on 9 May 1982.

The provisions of the Convention will enter into force for the Czechoslovak Socialist Republic on 1 June 1982.

The Czechoslovak Government has designated the following authorities as the authorities referred to in Articles 2, 6 and 9 of the Convention;

competent for the Czech Socialist Republic:

Ministerstvo spravedlnosti Ceske socialisticke republiky/ Ministry of Justice of the Czech Socialist Republic 128 10 Praha 2, Vysehradska 16;

competent for the Slovak Socialist Republic:

Ministerstvo spravodlivosti Slovenskej socialistickej republiky/Ministry of Justice of the Slovak Socialist Republic 883 11 Bratislava, Suvorovova 12.

4 With the following declarations:

re Art. 2 and 18

The Ministry of Justice is designated as the Central Authority.

re An. 6

The Danish court of law that has asked for the service to be made is designated as competent to complete the certificate in accordance with Article 6.

re Art. 9

The local judge of first instance—though, as regards the court of first instance at Copenhagen and the court of first instance of the city and of the canton of Arhus, the president of the court—is designated as competent to receive documents forwarded through consular channels in accordance with Art. 9.

re Art. 10

Denmark is unable to recognize the method of effecting service set out in Art. 10, para. c.

re Art. 15

Denmark avails itself of the power, provided for in Art. 15, second paragraph, to declare that the judge may give judgment in a matter even if the provisions of Art. 15, first paragraph, are not, fulfilled.

re Art. 16

Denmark avails itself of the power, provided for in Art. 16, third paragraph, to declare that an application will not be entertained if it is made after the expiration of a period of one year following the date of judgment. The question of the re-hearing of a matter in which a person has been judged by default shall be decided in accordance with the rules of the code of procedure, Art. 373 and Art. 374, cf. Art. 434. According to these rules, any person against whom judgment is given by default in an action, in first instance may apply for a re-hearing of the matter if he can prove that the default cannot be imputed to him. The application for a re-hearing should be filed as soon as possible and may not be submitted after the expiration of a period of one year following the date of judgment.

5 With a declaration that the signing of the Agreement "does not mean in any way a recognition of Israel" by the

Arab Republic of Egypt and that "no treaty relation will arise between" the two countries.

The Arab Republic of Egypt also declared that it "opposes the use of the methods of transmitting abroad the judicial and extrajudicial documents according to Articles 8 and 10 of the Convention."

In conformity with article 21 of the Convention the Arab Republic of Egypt has designated the Ministry of Justice as the central authority as provided for in Articles 2 and 18.

First paragraph of declaration withdrawn effective Jan. 25, 1980.

5a *Notification in conformity with Article 31, paragraph c, of the Convention*

The Republic of Estonia deposited its instrument of accession to the above-mentioned Convention with the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 2 February 1996, in accordance with Article 28, paragraph 1, of the Convention.

The instrument of accession of the Republic of Estonia contains the following declarations:

"1) the Republic of Estonia is against the way of forwarding referred to in point c of Article 10;

"2) on the basis of Article 15 the judge may give judgment under the said conditions;

"3) on the basis of paragraph 3 of Article 16 for a period of 3 years;"

In accordance with the terms of Article 28, paragraph I, of the Convention any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27 (viz: 10 February 1969).

In accordance with Article 28, paragraph 2, the convention shall enter into force for such a State in the absence of any obfection from a State, which has ratified the Convention (at present: Belgium, Denmark, Egypt, Germany, Finland, France, Greece, Ireland, Israel, Japan the Kingdom of the Netherlands, Luxemburg, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America) before such deposit, notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession. For practical reasons this six months' period will in this case run from 15 March 1996 to 15 September 1996.

6 With the following declarations:

"1. The Ministry of Justice has been designated Central Authority, pursuant to the first paragraph of article 2 of the Convention.

"2. The Central Authority (The Ministry of Justice) is acting as the authority presupposed in art. 9 of the Convention.

"3. Finnish authorities are not obliged to assist in serving documents transmitted by using any of the methods referred to in sub-paragraphs (b) and (c) of art. 10 of the Convention."

(Ministry of Justice was substituted for Ministry of Foreign Affairs as Central Authority by Note dated 31 March 1982, effective I June 1982.)

7 With the following declarations:

"1. In conformity with Articles 2 and 18 of the Convention, the Ministry of Justice, Civil Division of International Judicial Assistance (Ministehere de la Justice, Service Civil de l'Entraide judiciaire internationale), 13 Place Vendome,

Paris (1er), is designated as the Central Authority to the exclusion of all other authorities.

"2. The authority competent to complete the certificate referred to in Article 6 is the Public Prosecutor of the Republic (Procureur de la Republique) in whose district the addressee of the document to be served resides.

"3. The Public Prosecutor of the Republic (Procureur de la Republique) is likewise authorized to receive documents forwarded through consular channels in accordance with Article 9.

"4. The Government of the French Republic declares that it is opposed, as has been provided for in Article 8, to the direct service, through diplomatic and consular agents of the contracting States, of documents upon persons who are not nationals of those States.

"5. The Government of the French Republic declares that the provisions of the second paragraph of Article 15 have its approval. It furthermore declares, with reference to Article 16, paragraph 3, that an application for relief from the effects of the expiration of the time for appeal from a judgment will not be entertained if it is filed more than twelve months following the date of the judgment."

7a On October 3, 1990 the German Democratic Republic acceded to the Federal Republic of Germany.

With the following declarations:

"(1) Requests for service shall be addressed to the Central Authority of the Land where the request is to be complied with. The Central Authority pursuant to Article 2 and paragraph 3 of Article 18 of the Convention shall be for

Baden-Wurttemberg	das Justizministerium Baden-Wiirttemberg (The Ministry of Justice of Baden-Wurttemberg), D 7000 Stuttgart
Bavaria	das Bayerische Staatsministerium der Justiz (The Bavarian State Ministry of Justice), D 8000 Munchen
Berlin	der Senator fir Justiz (The Senator of Justice), D 1000 Berlin By Note of 29 September 1992 the following central authorities were designated pursuant to Articles 2 and 18
in Brandenburg:	Das Ministerium der Justiz des Landes Brandenbuig D-0-1561 Potsdam;
Bremen	der President des Landgerichts Bremen (The President of the Regional Court of Bremen), D 2800 Bremen
Hamburg	der President des Amtsgerichts Hamburg (The President of the Local Court of Hamburg), D 2000 Hamburg
Hesse	Der Hessische Minister der Justiz (The Hessian Minister of Justice), D. 6200 Wiesbaden
Lower Saxony	Der Niedersachsische Minister der Justiz (The Minister of Justice of Lower Saxo-Ny), D 3000 Hannover By Note of 29 September 1992 the following central authority was designated in
Mecklenburg-Western Pomerania:	Der Minister fur Justiz, Bundes-und Europaangelegeneiten D-O-2754 Schwerin
Northrhine-Westphalia	Pursuant to Article 21 of the Convention, the Government of the Federal Republic of Germany notified the Ministry of Foreign Affairs of the Kingdom of the Netherlandsby note dated February 19, 1991, that with effect from April 1, 1991, the designated authority for the Land Northrhine-Westphalia will no longer be "der Justizminster des Landes Nordrhine-Westfalen" but "der Prasident des Oberlandesgerichts Dusseldorf". D 4000 Dusseldorf
Rhineland-Palatinate	Das Ministerium der Jutiz (the Ministry of Justice), D 6500 Mainz
Saarland	Der Minister fur Rechtspfiege (The Minister of Justrice), D 6600 Sarbrucken By Note of 29 September 1992 the

	following central authority was designated
In Saxe:	Das Sachsische Staatsministerium der Justiz D-O 8060 Dresden
	By Note of 29 September 1992 the following central authority was designated
In Saxe-Anhalt:	Das Ministerium der Justiz des Landes Sachsen-Anhalt D-O 3037 Magdeburg
Schleswig-Holstein	Der Justizminister des Landes Schleswig-Holstein (The Minister of Justice of the Land Schleswig-Holstein), D 2300 Kiel By Note of 29 September 1992 the following central authority was designated
In Thuringe:	Das Justzministerium Thuringen D-O 5082 Erfurt

"The Central Authorities are empowered to have requests for service complied with directly by postal channels if the conditions for service in accordance with paragraph 1(a) of Article 5 of the Convention have been fulfilled. In that case the competent Central Authority will hand over the document to the postal authorities for service. In all other cases the local court (Amtsgericht) in whose district the documents are to be served shall be competent to comply with requests for service. Service shall be effected by the registry of the local court.

"Formal service (paragraph 1 of Article 5 of the Convention) shall be permissible only if the document to be served is written in, or translated into, the German language.

"(2) The Central Authority shall complete the certificate (paragraphs 1 and 2 of Article 6 of the Convention) if it has itself arranged for the request for service to be complied with directly by postal channels; in all other cases this shall be done by the registry of the local court.

"(3) The Central Authority of the Land where the documents are to be served and the authorities competent under Section 1 of the Act of 18th December 1958 implementing the Convention on Civil Procedure, signed at The Hague on 1st March 1954, to receive requests from consuls of foreign

States, shall be competent to receive requests for service transmitted by a foreign consul within the Federal Republic of Germany (paragraph 1 of Article 9 of the Convention). Under that Act the president of the regional court (Landgericht) in whose district the documents are to be served shall be competent; in his place the president of the local court shall be competent if the request for service is to be complied with in the district of the local court which is subject to his administrative supervision.

"(4) In accordance with paragraph 2(a) of Article 21 of the Convention, the Government of the Federal Republic of Germany objects to the use of methods of transmission pursuant to Articles 8 and 10. Service through diplomatic or consular agents (Article 8 of the Convention) is therefore only permissible if the document is to be served upon a national of the State sending the document. Service pursuant to Article 10 of the Convention shall not be effected." At the time of the deposit of its instrument of ratification, the Federal Republic of Germany declared that the said Convention shall also apply to Land Berlin with effect from the date on which it enters into force for the Federal Republic of Germany.

By a Note dated November 19, 1992 addressed to the Ministry of Foreign Affairs of the Kingdom of the Netherlands, the Government of the Federal Republic of Germany made in conformity with Article 21, second paragraph, letter b, of the above mentioned Convention the following declaration:

1. *Notwithstanding the provisions of the first paragraph of Article 15, a German judge may give judgment even if no certificate of service or delivery has been received if all the following conditions are fulfilled:*

—the document was transmitted by one of the methods provided for in this Convention,

—a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

—no certificate of any kind has been received even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed

2. *An application for relief in accordance with Article 16 will not be entertained if it is filed after the expiration of one year following the termination of the time-limit which has not been observed*

7b *Notification in conformity with Article 31 of the Convention*

In accordance with Article 26 of the Convention the Ambassador of Greece at The Hague signed on 20 July 1983 for the Hellenic Republic the above-mentioned Convention as follows:

PECONOMOU20 juillet 1983

and deposited on the same date the instrument of ratification by the Hellenic Republic of the Convention.

In conformity with its Article 27, paragraph 2, the Convention will enter into force for the Hellenic Republic on 18 September 1983.

The Greek Government designated the Department of Administrative and Judicial Affairs of the Ministry of Foreign Affairs of the Hellenic Republic as the Central Authority pursuant to Article 2 of the Convention.

The Permanent Bureau of the Hague Conference on private international law presents its compliments to the Diplomatic Missions of the Member States and to the National Organs and has the honour to inform them that, by a Note dated 23 November 1989 addressed to the Ministry of Foreign Affairs of the Kingdom of the Netherlands, the Government of the

Hellenic Republic made in conformity with Article 15, second paragraph, and Article 21, second paragraph, of the above-mentioned Convention the following declaration:

The judges of the Hellenic Republic may give judgment if all the conditions in Article 15, paragraph Z letters (a), (b), and (c) of the Convention are fulfilled even if no certificate of service or delivery has been received.

(Translation]

7c *otification in conformity with Article 31*

Ireland deposited, in accordance with Article 26, paragraph 2, of the above-mentioned Convention, its instrument of ratification with the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 5 April 1994.

The instrument of ratification contains the following declarations:

"Article 3

The authority or judicial officer competent under the laws of Ireland for the purpose of Article 3 of the Convention are the Central Authority, a practising Solicitor, a Country Registrar or a District Court Clerk.

Article 15

Pursuant to the Second paragraph of Article 15 a Judge in Ireland may give judgment even if no certificate of service or delivery has been received, if the conditions set out in the second part of Article 15 of the Convention are fulfilled.

and the following objections: Article 10

In accordance with the provision in Article 10 of the Convention the Government of Ireland objects to

(i) the freedom under Article 10(b) of judicial officers, officials or other competent persons of the State of

origin to effect service in Ireland of judicial documents directly to judicial officers, officials or other competent persons and

(ii) the freedom under Article 10(c) of any person interested in a judicial proceeding to effect service in Ireland of judicial documents directly through judicial officers, officials or other competent persons

but this is not intended to preclude any person in another contracting State who is interested in a judicial proceeding (including his lawyer) from effecting service in Ireland directly through a solicitor in Ireland."

The Master of the High Court is designated as the Central Authority for Ireland in accordance with Article 2 and shall be the appropriate authority for completion of certificates on the form of the model annexed to the Convention.

The Convention will enter into force for Ireland on 4 June 1994.

By Note, received at the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 31 March 1994, the Government of the United States of America declared that in accordance with Article 29, paragraph 2, of the above-mentioned Convention, in addition to the territorial extensions made upon deposit of the U.S. instrument of ratification (November 19, 1970), the Government of the United States of America hereby declares that the Convention shall also be extended to the Commonwealth of the Northern Mariana Islands (which became a U.S. Commonwealth on November 3, 1986).

The authorities currently designated by the Government of the United States of America to perform certain functions under the Treaty shall also be the authorities designated to perform those functions for the Commonwealth of the Northern Mariana Islands.

The Convention will enter into force for the Commonwealth of the Northern Mariana Islands on 30 May 1994.

8 *With the following declarations and reservations*:

"a) The Central Authority in Israel within the meaning of Articles 2, 6 and 18 of the Convention is: The Director of Courts, Directorate of Courts, Russian Compound, Jerusalem;

"b) The State of Israel, in its quality as State of destination, will, in what concerns Article 10, paragraphs b) and c), of the Convention, effect the service of judicial documents only through the Directorate of Courts, and only where an application for such service emanates from a judicial authority or from the diplomatic or consular representation of a Contracting State;

"c) An application to relieve a defendant from the effects of the expiration of the time of appeal from a judgment within the meaning of Article 16 of the Convention will be entertained only if filed within one year from the date of the judgment in question."

8a *Notification in conformity with Article 31, paragraph a and e of the Convention*

In accordance with Article 26, paragraph 2, the Italian Republic deposited its instrument of ratification of the Convention with the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 25 November 1981.

On the occasion of the deposit of the instrument of ratification the Italian Government notified of the following:

Translation

"a) pursuant to Articles 2 and 18, '1'Uthcro umco degh uttmciah giudiziari presso la torte d'appello di Roma' (the registry of the court of appeal in Rome) is

designated as the Central Authority for the purpose of Article 5;

"b) 'gli uffici unici degli ufficiali giudiziari costituiti presso le corti di appello e i tribunali e gli ufficiali giudiziari addetti alle preture' (the registries of the courts of appeal and other courts, and the bailiffs appointed to the courts of first instance) are competent to issue the certificate pursuant to Article 6;

"c) 'gli uffici unici degli ufficiali giudiziari presso le corti di appello e i tribunali e gli of iciali giudiziari addetti alle preture' (the registries of the courts of appeal and other courts, and the bailiffs appointed to the courts of first instance) are competent to receive for the purpose of service, documents forwarded by consular or diplomatic authorities pursuant to Article 9;

"d) the costs proceeding from each request for service in accordance with Article 5, first paragraph, under a and b, which requires the employment of a bailiff, have to be paid in advance in the size of 6,000 lire, except adjustment at the time of restitution of the notified document.

"However, the costs in relation to the notified document pursuant to Article 12, paragraph 2, of the Convention, can be paid after the restitution in a way specifically fixed by the bailiff.

"The Italian State shall not require any advance or repayment of costs for service of documents requested by the Contracting States in so far as those States for their parts shall not require the payment or repayment of costs for documents originated from Italy."

In accordance with Article 27, paragraph 2, the Convention shall enter into force for the Italian Republic on 24 January 1982.

9 With the following declarations and reservations:

"(1) The Minister for Foreign Affairs is designated as the Central Authority which receives requests for service from other contracting States, pursuant to the first paragraph of Article 2.

"(2) The District Court which has rendered judicial aid with respect to the service is designated as the authority competent to complete the certificate in the form of the model annexed to the Convention, pursuant to the first paragraph of Article 6.

"(3) The Minister for Foreign Affairs is designated as the authority competent to receive documents transmitted through consular channels, pursuant to the first paragraph of Article 9.

"(4) It is declared that the Government of Japan objects to the use of the methods of service referred to in subparagraphs (b) and (c) of Article 10.

"(5) It is declared that Japanese courts may give judgment if all the conditions specified in the second paragraph of Article 15 are fulfilled."

9a With the following declarations:

"1. The Public Prosecutor at the Superior Court of Justice has been designated as the Central Authority within the meaning of Article 2 of the Convention. He is also competent to receive the documents forwarded through the channels referred to in Article 9, para. 1, of the Convention.

"2. In accordance with Article 8, the Luxembourg Government is opposed to diplomatic and consular agents directly serving within its territory judicial documents on persons other than nationals of their own country.

"3. [Withdrawn by Note dated June 2, 1978.)

"4. When foreign judicial documents are served, in connection with Articles 5(a) and 10(b) and (c), through the intermediary of a Luxembourg official, they must be drawn up in French or German or accompanied by a translation into one of those languages.

"5. The Luxembourg Government declares that notwithstanding the provisions of Article 15, para. 1, of the Convention, its judges can enter judgment if the conditions set out in para. 2 of the said Article are fulfilled.

"6. In accordance with Article 16, para. 3, of the Convention, the Luxembourg Government declares that the applications referred to in para. 2 0l the said Article will not be entertained It they are tiled after the expiration of a period of one year following the date of the judgment."

10 With a declaration designating the Registrar of the High Court of Malawi, P.O. Box 30244, Chichiri, Blantyre 3, Malawi, as the Central Authority referred to in Article 2.

10a With the following declarations:

"1. The Public Prosecutor at the District Court of The Hague is designated for the Netherlands as the Central Authority referred to in Article 2 of the Convention.

"The office of the Public Prosecutor is situated at Juliana van Stolberglaan 2-4, The Hague.

"2. Pursuant to Article 18, paragraph 1, of the Convention, the Public Prosecutor at a District Court other than that of The Hague is likewise competent to receive requests and serve documents in accordance with Articles 3 to 6 of the Convention within the area of jurisdiction of such other Court.

"3. The Public Prosecutor at the District Court in the area of jurisdiction where service of the document has been requested is competent to complete a certificate as referred to under Article 6 of the Convention.

"4. The Public Prosecutor at the District Court in the area of jurisdiction where service of the document is requested has been designated for the Netherlands as the authority referred to in Article 9, paragraph 1, of the Convention which is competent to serve documents forwarded through consular channels.

"5. Notwithstanding the provisions of Article 15, paragraph 1, of the Convention, the Netherlands Court may give judgment, even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

"a) the document was transmitted by one of the methods provided for in this Convention;

"b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;

"c) no certificate, either of service or of delivery, has been received even though every reasonable effort has been made to obtain it through the competent authorities.

"6. An application for relief from the effects of the expiration of the time for appeal as provided for in Article 16 is only admissible, if it is submitted within a year, to be calculated from the date on which the judgment is given."

In accordance with Article 27, paragraph 2, the Convention shall enter into force for the Kingdom of the Netherlands (for the Kingdom in Europe) on January 2, 1976.

In accordance with Article 29, paragraph 2, the Kingdom of the Netherlands declared on 28 May 1986 that the above-mentioned Convention shall extend to Aruba.

In conformity with Article 29, paragraph 3, the Convention will enter into force for Aruba on 27 July 1986.

Notification in conformity with Ankle 31, letter e, of the Convention

The Ministry of Foreign Affairs of the Kingdom of the Netherlands notifies hereby the designation of the

Head, Central Office for General
Legal Affairs
L.G. Smith Boulevard 76
Oranjestad
Aruba

as the authority for Aruba referred to in Article 21 of the Convention.

11 With the following declarations:

"1. In accordance with Article 2, the Ministry of Justice, Oslo/Dep, is designated as the Central Authority.

"2. In accordance with Article 6, the County or Town Court in whose district the document has been served is designated for the purpose of completing the certificate in the form annexed to the Convention.

"3. In accordance with Article 9 first paragraph, the County or Town Court in whose district the person to be served is a resident or is staying, is designated as receiver of documents forwarded through consular channels.

"4. The Government of Norway is opposed to the use of such methods of service or transmission of documents on its territory as mentioned in Articles 8 and 10 of the Convention.

"5. Norwegian courts may give judgment when all the conditions specified in the second paragraph of Article 15 are fulfilled.

"6. In accordance with the third paragraph of Article 16, applications for relief according to Article 16 will not be entertained if they are delivered to the competent Norwegian authorities after the expiration of three years following the date of the judgment."

11a *Notification in conformity with Article 31, paragraph c, of the Convention*

Pakistan deposited its instrument of accession to the above-mentioned Convention with the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 7 December 1988 in accordance with Article 28, paragraph 1.

The States which have ratified the Convention were notified by the Dutch Government of the accession on 19 December 1988. Since none of these States raised an objection to the accession within the period of six months specified in Article 28, paragraph 2, the said accession became perfect on 6 July 1989.

The provisions of the Convention will enter into force for Pakistan on 1 August 1989 in accordance with Article 28, paragraph 3.

The Permanent Bureau of the Hague Conference on private international law presents its compliments to the Diplomatic Missions of the Member States and to the National Organs and has the honour to inform them that, by a Note dated 1 February 1990, the Government of

Pakistan

informed the Ministry of Foreign Affairs of the Kingdom of the Netherlands of the designation of authorities, in conformity with Article 21 of the above-mentioned convention, and made declarations. The text of the communication is as follows:

"the Government of Pakistan has designated the Solicitor, Ministry of Law and Justice to the Government

of Pakistan in Islamabad, as the central authority, for receiving requests for service coming from other Contracting States and Registrars of Lahore High Court Lahore, Peshawar High Court Peslnvar, Baluchistan High Court Quetta, and the High Court of Sind, Karachi, 'other authorities' in addition to the Central Authority, within their respective territorial jurisdictions

"The certificate prescribed by Article 6 of the Convention if not completed by a judicial authority shall be completed or countersigned by the Registrars of the High Courts.

"For the purposes of Article 8 of the Convention it is hereby declared that the Government of Pakistan is opposed to service of Judicial Documents upon persons, other than nationals of the requesting States, residing in Pakistan, directly through the Diplomatic and Consular agents of the requesting States. However, it has no objection to such service by postal channels directly to the persons concerned /Artiĉle 10(a)J or directly through the judicial officers of Pakistan in terms of Article 10(b) of the Convention if such service is recognised by the law of the requesting State.

"In terms of the second paragraph of Article 15 of the Convention, it is hereby declared that notwithstanding the provision of the first paragraph there-of the judge may give judgement even if no certificate of service or delivery has been received, if the following conditions are fulfilled—

"a) the document was transnziued by one of the methods provided for in the Convention;

"b) the period of time of not less than 6 months, considered adequate by the Judge in the particular case, has elapsed since the date of transmission of the document; and

"c) no certificate of any kind has been received even though every reasonable effort has been made to obtain it through the competent authorities of the Slate addressed

"As regards Article 16, paragraph 3, of the Convention it is hereby declared that in case of ex--parse decisions, an application for setting it aside will not be entertained if it is filed after the expiration of the period of limitation prescribed by law of Pakistan."

11b *Notification in conformity with Article 31, paragraph c, of the Convention*

The Republic of Poland deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands its instrument of accession to the above-mentioned Convention on 13 February 1996, in accordance with Article 28, paragraph 1, of the Convention.

The instrument of accession of the Republic of Poland contains a declaration the text of which is attached and the translation of which is as follows:

Translation

—The Republic of Poland has decided to join the Convention, declaring that it is opposed to the modes of service specified in Articles 8 and 10 within its territory;

The instrument of accession was accompanied by a declaration the text of which is also attached and the translation of which is as follows: In compliance with Article 21, the following actions are undertaken:

Article 2, Paragraph 1—the Central Authority designated to receive requests for service coming from another contracting State shall be the Ministry of Justice.

Article 18—other authorities (in addition to the Central Authority) designated to receive requests for service are Presidents of the voivodship courts.

Article 6—the authority designated to complete a certificate of service in the Republic of Poland shall be the court that has performed such service.

Article 9, Paragraph 1—the authorities designated for that purpose shall be the voivodship courts.

Articles 8 and 10—the Republic of Poland declares that it is opposed to the modes of service specified in Articles 8 and 10 within its territory.

In accordance with the terms of Article 28, paragraph I, of the Convention any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27 (viz: 10 February 1969).

In accordance with Article 28, paragraph 2, the Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention (at present: Belgium, Denmark, Egypt, Germany, Finland, France, Greece, Ireland, Israel, Japan, the Kingdom of the Netherlands, Luxemburg, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America) before such deposit notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession. For practical reasons this six months' period will in this case run from 29 February 1996 to 29 August 1996.

11c *Declaration of Portugal*—Legal Affairs Department of Ministry of Justice has been designated as Central

Authority, in accordance with Art. 2, paragraph 1, of Convention. Justice Department officials: court clerks (escrivaes) and process-servers (officiais de diligencias) have been designated as persons competent to prepare certificate referred to in Article 6 of Convention. In accordance with Art. 8, paragraph 2, of Convention, the Portuguese government grants diplomatic and consular agents power to serve documents on their own nationals only. Portuguese government declares that, notwithstanding provisions of first paragraph of Art. 15 of Convention its judges may give judgment if conditions listed in paragraph 2 of said Art. are fulfilled. In accordance with Art. 16, paragraph 3 of Convention, Portuguese government states that applications referred to in Art. 16, paragraph 2, will not be considered if they are made after expiration of a period of one year from date of judgment.

11d *Notification in conformity with Article 31, paragraph e of the Convention*

By Note dated 4 June 1981 and received at The Ministry of Foreign Affairs of the Kingdom of the Netherlands on 14 July 1981 the Republic of Seychelles informed the Ministry in accordance with Article 21 of the Convention of the following:

"Article 2

"The Central Authority designated is:

The Registrar
Supreme Court,
Victoria,
Mahe,
Republic of Seychelles.

"Article 8

"The Government of the Republic of Seychelles declares that it is opposed to service by a contracting state of judicial

documents upon persons abroad, without application of any compulsion, directly through the diplomatic or consular agents of that contracting state unless the document is to be served upon a national of the state in which the documents originate.

"Article 10

"The Government of the Republic of Seychelles declares that it objects to paragraph (b) and (c) of this Article, in so far as they permit service of judicial documents through officials or persons other than judicial officers.

"Article 15

"The Government of the Republic of Seychelles declares that not-withstanding the provisions of the first paragraph of this Article, the judge may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled.

"a) the document was transmitted by one of the methods provided for in this Convention,

"b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

"c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

"Article 16

"The Government of the Republic of Seychelles declares that it will not entertain an application for relief if filed later than one year following the date of the judgment."

11e By notification dated March 15, 1993 the Slovak Republic communicated the following: "In accordance with relevant principles and norms of international law and to extent defined by it, the Slovak Republic, as a successor

State, born from the division of the Czech and Slovak Federal Republic, considers itself bound, as of January 1, 1993, i.e. the date of the division of the Czechoslovak Federation, by multilateral international treaties to which the Czech and Slovak Federal Republic was a party at that date, including reservations and declarations in respect of provisions made earlier by Czechoslovakia, as well as objections by Czechoslovakia in respect of reservations made by other treaty parties", which are as follows: [Same declarations and reservations, *mutatis mutandis*, under Czech Republic, see footnote 3c).

11f The Permanent Bureau of the Hague Conference on private international law presents its compliments to the Diplomatic Missions of the Member States and to the National Organs and has the honour to inform them that, by instrument deposited on 4 June 1987 with the Ministry of Foreign Affairs of the Kingdom of the Netherlands,

Spain

ratified the above-mentioned Convention.

In accordance with Article 27, paragraph 2, the Convention will enter into force for *Spain on 3 August 1987.*

The instrument of ratification contains the following declarations:

> *"1) The Spanish State declares that its judges, notwithstanding the provisions of Article 15, may give judgment even if no certificate of service or delivery of documents has been received, if all the conditions enumerated in the said Article 15, paragraph 2, are fulfilled.*
>
> *"2) The Spanish State declares that the time of expiration, referred to in Article 16, is sixteen months from the date of the judgment*

"3) The Spanish State designates as the Central Authority to issue the certificates in the form of the model annexed to the Convention:

Secretarfa General Tecnica,
Subdireccit n de Cooperacidn Juridica Internacional,
Ministerio de Justicia,
San Bernardo, 45,
28015 MADRID." *(Translation)*

12 With the following declarations:

"a) The Ministry for Foreign Affairs (address: Utrikesdepartementet, Juridiska biy.an, Box 16121, S–103 23 Stockholm 16, Sweden) has been designated Central Authority.

"b) The Central Authority (the Ministry for Foreign Affairs) has been designated to receive documents transmitted through consular channels, pursuant to art. 9.

"c) Swedish authorities are not obliged to assist in serving documents transmitted by using any of the methods referred to in sub-paragraphs (b) and (c) of art. 10.

"By virtue of the third paragraph of art. 5 of the Convention the Central Authority requires that any document to be served under the first paragraph of the same article must be written in or translated into Swedish."

12a The Permanent Bureau of the Hague Conference on private international law presents its compliments to the Diplomatic Missions of the Member States and to the National Organs and has the honour to inform them that, by instrument deposited on 2 November 1994 with the Ministry of Foreign Affairs of the Kingdom of the Netherlands,

Switzerland

ratified the above-mentioned Convention.

In accordance with Article 27, paragraph 2, the Convention will enter into force for Switzerland on 1 January 1995.

The instrument of ratification contains the following reservations and declarations:

Translation:

"Re Article 1 -

1. With regard to Article 1, Switzerland takes the view that the Convention applies exclusively to the Contracting States. In particular, it believes that documents which are effectively addressed to a person resident abroad cannot be served on a legal entity who is not authorized to receive them in the country in which they were drawn up without derogating from Articles 1 and 15, first paragraph, of the Convention.

Re Articles 2 and 18

2. In accordance with Article 21, first paragraph (a), Switzerland designates the cantonal authorities listed in the annex as Central Authorities as referred to in Articles 2 and 18 of the Convention. Requests for the service of documents may also be addressed to the Federal Justice and Police Department in Bern, which will forward them to the appropriate Central Authority.

Re Article 5, third paragraph

3. Switzerland declares that in cases where the addressee does not voluntarily accept a document, it cannot officially be served on him or her in accordance with Article 5, first paragraph, unless it is in the language of the authority address, i.e. German, French or Italian, or accompanied by a translation into one of these languages, depending on the part of Switzerland in which the document is to be served (cf annex).

Re Article 6

4. In accordance with Article 21, first paragraph (b), Switzerland designates the competent cantonal court or the cantonal Central Authority as the body responsible for completing the certificate referred to in Article 6.

5. Re Articles 8 and 10

6. In accordance with Article 21, second paragraph (a), Switzerland declares that it is opposed to the use in its territory of the methods of transmission provided for in Articles 8 and 10.

Re Article 9

1. In accordance with Article 21, first paragraph (c), Switzerland designates the cantonal Central Authorities as the authorities competent to receive documents transmitted by consular channels pursuant to Article 9 of the Convention."

The list of Central Authorities for the Cantons is attached

Cantonal Central Authorities *Annex*

Cantons	Official Language(s) (G=German) (F=French) (I=Italian)	Addresses	Telephone numbers
Appenzell Ausserrhoden	G	Kantonsgericht Appenzell A.Rh., 9043 Trogen	071/ 94 24 61
Appenzell Innerrhoden	G	Kantonsgericht Appenzell I.Rh., 9050 Appenzell	071/ 87 95 51
Aargau	G	Obergericht des Kantons Aargau, 5000 Aarau	064/ 21 19 40
Basel-Landschaft	G	Obergericht des Kantons Basel-Landschaft, 4410 Liestal	061/925 51 11
Basel-Stadt	G	Appellationsgericht Basel-Stadt, 4054 Basel	061/267 81 81
Bern	G/F	Justizdirektion des KantonsBern, 3011 Bern	031/633 76 76
Fribourg	F/G	Tribunal cantonal, 1700 Fribourg	037/ 25 39 10
Geneve	F	Parquet du Procureur general, 1211 Geneve 3	022/319 21 11

Glarus	G	Obergerocjt des Kantons Glarus, 8750 Glarus	058/ 61 15 32
Gaubunden	G	Justiz-, Polizei- und Sanitats-Department Graubunden, 7001 Chur	081/ 21 21 21
Jura	F	Departement de la Justice, 2800 Delemont	066/ 21 51 11
Luzern	G	Obergericht des Kantons Luzern, 6002 Luzern	041/ 24 51 11
Neuchatel	F	Departement de Justice, 2001 Neuchatel	038/ 22 31 11
Nidwalden	G	Kantonsgericht Nidwalden, 6370 Stans	041/ 63 79 50
Obwalden	G	Kantonsgericht des Kantons Obwalden, 6060 Sarnen	041/ 66 92 22
St. Gallen	G	Kantonasgericht St. Gallen, 9001 St. Gallen	071/ 21 31 11
Schaffhausen	G	Obrergericht des Kantons Schaffhausen, 8201 Schaffhausen	053/ 82 74 22
Schwyz	G	Kantonsgerisht Schwys, 6430 Schwyz	043/ 24 11 24
Solothurn	G	Obergericht des Kantons Solothurn, 4500 Solothurn	065/ 21 73 11
Tessin	I	Tribunale di appello, 6901 Lugano	091/ 21 51 11
Thurgau	G	Obergericht des Kantons Thurgau, 8500 Frauenfeld	054/ 22 31 21
Uri	G	Gerichtskanzlei, Iri, 6460 Altdorf	044/ 4 22 44
Valais	F/G	Tribunal cantonal, 1950 Sion	027/ 22 93 93
Vaud	F	Tribunal cantonal, 1014 Lausanne	021/313 15 11
Zug	G	Pbergerocjt des Kantons Zug, Rechtsjilfe, 6400 Zug	042/ 25 33 11
Zurich	G	Obergericht des Kantons Zurich, Rechtshilfe, 8023 Zurich	01/257 91 91

Autorites centrals cantonales *Annex*

Cantons	Langue(s) officielle(s) (a=allemande) (b=franzais) (i=italien)	Addresses	Numeros de telephone
Appenzell Ausserrhoden	a	Kantonsgericht Appenzell A.Rh., 9043 Trogen	071/ 94 24 61
Appenzell Innerrhoden	a	Kantonsgericht Appenzell I.Rh., 9050 Appenzell	071/ 87 95 51
Aargua	a	Obergericht des Kantons Aargau, 5000 Aarau	064/ 21 19 40
Basel-	a	Obergericht des Kantons Basel-	061/925 51 11

Landschaft		I- ndschaft, 4410 Liestal	
Basel-Stadt	a	Appellationsgericht Basel-Stadt, 4054 Basel	061/267 81 81
Bern	a/f	Justizdirektion des Kantons Bern, 3011 Bern	031/633 76 76
Fribourg	f/a	Tribunal cantonal, 1700 Fribourg	037/25 39 10
Geneve	f	Parquet du Procureur general, 1211 Geneve 3	022/319 21 11
Glarus	a	Obergericht des Kantons Glarus, 8750 Glarus	058/ 61 15 32
Graubunden	a	Justiz-, Polizei- and Sanitats-departement Graubunden, 7001 Chur	081/ 21 21 21
Jura	f	Departement de la Justice, 2800 Delemont	066/ 21 51 11
Luzern	a	Obergericht des Kantons Luzern, 6002 Luzern	0411 24 51 11
Neuchatel	f	Department de Justice, 2001 Neuchatel	038/ 22 31 11
Nidwalden	a	Kantonsgericht Nidwalden, 6370 Stans	041/ 63 79 50
Obwalden	a	Kantonsgericht des Kantons Obwalden, 6060 Sarnen	041/66 92 22
St. Gallen	a	Kantonsgericht St Gallen, 9001 St. Gallen	071/ 21 31 11
Schaffhausen	a	Obergericht des Kantons Schaffhausen, 8201 Schaffhausen	053/ 82 74 22
Schwyz	a	Kantonsgericht Schwyz, 6340 Schwyz	043/ 24 11 24
Solothurn	a	Obergericht des Kantons Solothurn, 4500 Solothurn	065/ 21 73 11
Tessin	i	Tribunals di appello, 6901 Lugano	0911 21 51 11
Thurgau	a	Obergericht des Kantons Thurgau, 8500 Frauenfeld	054/ 22 31 21
Uri	a	Gerichtskanzlei Uri, 6460 Altdorf	044/ 4 22 44
Valais	f/a	Tribunal cantonal, 1950 Sion	027/22 93 93
Vaud	f	Tribunal cantonal, 1014 Lausanne	021/313 15 11
Zug	a	Obergericht des Kantons Zug, Rechtshilfe, 6300 Zug	042 25 33 11
Zurich	a	Obergericht des Kantons Zurich, Rechtshilfe, 8023 Zirich	01/257 91 91

13 With the following declaration:

"1. Pursuant to Article 2, paragraph 1 of the Convention, the Directorate General of Civil Affairs of the Ministry of Justice (Adalet Bakanligi Hukuk Isleri Genel Mudurlugu, Ankara) is designated as the Central Authority.

"2. The Directorate General of Civil Affairs of the Ministry of Justice is also competent to complete certificates as referred to in Article 6 of the Convention.

"3. The Directorate General of Civil Affairs is also designated as the authority competent to receive documents forwarded through the channels specified in Article 9, paragraph 1 of the Convention.

"4. Pursuant to Article 8 of the Convention, the Government of the Republic of Turkey acknowledges the freedom of diplomatic and consular agents to serve judicial documents upon their own nationals only,

"5. The Government of the Republic of Turkey declares that it is opposed to the use of the methods of serving judicial documents listed in Article 10 of the Convention.

"6. The Government of the Republic of Turkey declares that its judges, notwithstanding the provisions of the first paragraph of Article 15, may give judgment if all the conditions set out in the second paragraph of the said Article are fulfilled.

"7. Pursuant to Article 16, paragraph 3, the Government of the Republic of Turkey declares that applications for relief as referred to in Article 16, paragraph 2, will not be entertained if they are filed after the expiration of a period of one year following the date of the judgment."

Embassy of the Republic of Turkey [at the Hague]

No. 18313/328-78

The Embassy of Turkey presents its compliments to the Ministry of Foreign Affairs, the depositary of the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, and has the honor to inform it of the text of the declaration of the Turkish Government regarding the accession to the aforementioned Convention by the Greek Cypriot Government:

Quote:

The Republic of Turkey, although not exercising its right of opposition as set forth in Article 28(2) of the Convention, declares that it does not consider itself bound to apply the provisions of the Convention with respect to the Greek Cypriot Government which, in constitutional terms, is not authorized to represent the "Republic of Cyprus" as a whole.

The Embassy of Turkey avails itself of this opportunity to renew to the Ministry of Foreign Affairs the assurances of its highest consideration.

The Hague, April 6, 1983

[Initialed]

[Official stamp]

14 With the following declarations:

(1) "(a) In accordance with the provisions of Articles 2 and 18 of the Convention, Her Majesty's Principal Secretary of State for Foreign Affairs is designated as the Central Authority; and the Senior Master of the Supreme Court, Royal Courts of Justice, Strand, London W.C. 2, the Crown Agent for Scotland, Lord Advocate's Department, Crown Office, 9 Parliament Square, Edinburgh 1, and the [as per letter dated 10 June 1980] the Master (Queen's Bench and Appeals), Royal Courts of

Justice, Belfast 1, are designated as additional authorities for England and Wales, Scotland, and Northern Ireland respectively.

"(b) The authorities competent under Article 6 of the Convention to complete the Certificate of Service are the authorities designated under Articles 2 and 18.

"(c) In accordance with the provisions of Article 9 of the Convention, the United Kingdom designates as receivers of process through consular channels the same authorities as those designated under Articles 2 and 18.

"(d) With reference to the provisions of paragraphs (b) and (c) of Article 10 of the Convention, documents for service through official channels will be accepted in the United Kingdom only by the central or additional authorities and only from judicial, consular or diplomatic officers of other Contracting States.

"(e) The United Kingdom declares its acceptance of the provisions of the second paragraph of Article 15 of the Convention.

"(f) In accordance with the provisions of the third paragraph of Article 16 of the Convention, the United Kingdom declares, in relation to Scotland only, that applications for setting aside judgments on the grounds that the defendant did not have knowledge of the proceedings in sufficient time to defend the action will not be entertained if filed more than one year after the date of judgment.

"The authorities designated by the United Kingdom will require all documents forwarded to them for service under the provisions of the Convention to be in duplicate and, pursuant to the third paragraph of Article 5 of the Convention, will require the documents to be written in, or translated into, the English language.

"A notification under the second and third paragraphs of Article 29 regarding the extension of the Convention to the territories for the international relations of which the United Kingdom is responsible will be addressed to the Royal Netherlands Government in due course."

(2) "(a) In accordance with Article 18 of the Convention the authority shown against the name of each territory in the Annex (hereinafter severally called 'the designated authority') is designated as the authority in that territory competent to receive requests for service in accordance with Article 2 of the Convention.

"(b) The authority in each territory competent under Article 6 of the Convention to complete the Certificate of Service is the designated authority

"(c) In accordance with the provisions of Article 9 of the Convention, the designated Authority shall receive process sent through consular channels.

"(d)With reference to the provisions of paragraphs (b) and (c) of Article 10 of the Convention, documents sent for service through official channels will be accepted in a territory listed in the Annex by the designated authority and only from judicial, consular or diplomatic officers of other Contracting States.

"(e) The acceptance by the United Kingdom of the provisions of the second paragraph of Article 15 of the Convention shall equally apply to the territories named in the Annex.

"The authorities designated in the Annex will require all documents forwarded to them for service under the provisions of the Convention to be in duplicate and, pursuant to the third paragraph of Article 5 of the Convention, will require the documents to be written in, or translated into, the English language."

ANNEX

Antigua and Barbuda *	The Governor General, Antigua and Barbuda The Registrar of the High Court of Antigua and Barbuda, St. John's, Antigua.
Bermuda	The Registrar of the Supreme Court, Bermuda.
British Honduras	The Supreme Court Registry, British Honduras.
British Solomon Islands Protectorate	The Registrar of the High Court, Honiara, British Solomon Islands Protectorate.
British Virgin Islands	The Registrar of the Supreme Court, British Virgin Islands
Cayman Islands	The Clerk of the Courts, Grand Cayman, Cayman Islands
Central and Southern Line Islands	The Registrar of the High Court, Honiara, British Solomon Islands Protectorate.
Falkland Islands and Dependencies	The Registrar of the Supreme Court, Stanley, Falkland Islands.
Fiji	The Registrar of the Supreme Court, Fiji.
Gibraltar	The Registrar of the Supreme Court, Gibraltar.
Gilbert and Ellice Islands Colony	The Registrar of the High Court, Tarawa, Gilbert and Ellice Islands Colony.
Guernsey	The Bailiff, Bailiff's Office, Royal Court House, Guernsey, Channel Islands.
Isle of Man	The First Deemster and Clerk of the Rolls, Rolls Office, Douglas, Isle of Man.
Jersey	The Attorney General, Jersey, Channel Islands.
Montserrat	The Registrar of the High Court, Montserrat.
Pitcairn	The Governor and Commander-in-Chief, Pitcairn.
St. Helena and Dependencies	The Supreme Court, St. Helena
St. Lucia	The Registrar of the High Court of Justice, St. Lucia.
St. Vincent	The Registrar of the Supreme Court, St. Vincent.
Seychelles *	The Supreme Court, Seychelles.
Turks and Caicos Islands	The Registrar of the Supreme Court, Turks and Caicos Islands.

* Ed. note—Now independent parties to the Convention. See also country footnote.

Etension to Anguilla.—

Notification in conformity with Article 31, paragraphs d and e, of the Convention

In accordance with Article 29, paragraph 2, of the Convention the Ambassador of the United Kingdom of Great Britain and Northern Ireland at The Hague notified the Minister of Foreign Affairs of the Kingdom of the Netherlands, by a Letter dated 30 July 1982 and received on 3 August 1982, the extension of the Convention to Anguilla.

In accordance with Article 29, paragraph 3, the Convention will enter into force for Anguilla on 28 September 1982.

The extension was accompanied by the following declarations:

(a) in accordance with Article 18 of the Convention the Registrar of the Supreme Court of Anguilla (hereinafter called the designated authority) is designated as the authority competent to receive re-quests for service in accordance with Article 2 of the Convention.

(b) the authority competent under Article 6 of the Convention to complete the Certificate of Service is the designated authority.

(c) in accordance with the provisions of Article 9 of the Convention the designated authority shall receive process sent through consular channels.

(d) with reference to the provisions of paragraphs (b) and (c) of Article 10 of the Convention, documents sent for service through official channels will be accepted by the designated authority and only from judicial, consular br diplomatic officers of other contracting states.

(e) the acceptance by the United Kingdom of the provisions of the second paragraph of Article 15 of the Convention shall apply to Anguilla.

The designated authority will require all documents forwarded to it for service under the provisions of the Convention to be in duplicate and, pursuant to the third paragraph of Article 5 of the Convention, will require the documents to be written in, or translated into, the English language.

Extension to the Associated Stare of Saint Christopher and Nevis.

Notification in conformity with Article 31, paragraphs d and e, of the Convention

In accordance with Article 29, paragraph 2, of the Convention the Ambassador of the United Kingdom of Great Britain and Northern Ireland at The Hague notified the Minister of Foreign Affairs of the Kingdom of the Netherlands by Letter dated 1 March 1983 and received on 2 March 1983 of the extension of the Convention to the Associated State of Saint Christopher and Nevis.

In accordance with Article 29, paragraph 3, the Convention will enter into force for Saint Christopher and Nevis on 1 May 1983.

The Letter contains the following declarations:

"a) in accordance with Article 18 of the Convention the Registrar of the West Indies Associated State Supreme Court, Saint Christopher and Nevis circuit (hereinafter called the designated authority) is designated as the authority competent to receive requests for service in accordance with Article 2 of the Convention;

"b) the authority competent under Article 6 of the Convention to complete the Certificate of Service is the designated authority;

"c) in accordance with the provisions of Article 9 of the Convention the designated authority shall receive process sent through consular channels;

"d) with reference to the provisions of paragraphs (b) and (c) of Article 10 of the Convention, documents sent for service through official channels will be accepted by the designated authority and only from judicial, consular or diplomatic officers of other contracting states;

"e) the acceptance by the United Kingdom of the provisions of the second paragraph of Article 15 of the Convention shall apply to Saint Christopher and Nevis.

"The designated authority will require all documents forwarded to it for service under the provisions of the Convention to be in duplicate and, pursuant to the third paragraph of Article 5 of the Convention, will require the documents to be written in, or translated into, the English language."

15 With the following declarations:

"1. In accordance with Article 2, the United States Department of Justice is designated as the Central Authority to receive requests for service from other Contracting States and to proceed in conformity with Articles 3 to 6.

"2. In accordance with Article 6, in addition to the United States Department of Justice, the United States Marshal or Deputy Marshal for the judicial district in which service is made are designated for the purpose of completing the certificate in the form annexed to the Convention.

"3. In accordance with the second paragraph of Article 15, it is declared that the judge may, notwithstanding the provisions of the first paragraph of Article 15, give judgment even if no certificate of service or delivery has been received, if all the conditions specified in subdivisions (a), (b) and (c) of the second paragraph of Article 15 are fulfilled.

"4. In accordance with the third paragraph of Article 16, it is declared that an application under Article 16 will not be entertained if it is filed (a) after the expiration of the period within which the same may be filed under the procedural regulations of the court in which the judgment has been entered, or (b) after the expiration of one year following the date of the judgment, whichever is later.

"5. In accordance with Article 29, it is declared that the Convention shall extend to all the States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

"6. By Note, received at the Ministry of Foreign Affairs of the Kingdom of the Netherlands on 31 March 1994, the Government of the United States of America declared that in accordance with Article 29, paragraph 2, of the above-mentioned Convention, in addition to the territorial extensions made upon deposit of the U.S. instrument of ratification (November 19, 1970), the Government of the United States of America hereby declares that the Convention shall also be extended to the Commonwealth of the Northern Mariana Islands (which became a U.S. Commonwealth on November 3, 1986).

"The authorities currently designated by the Government of the United States of America to perform certain functions under the Treaty shall also be the authorities designated to perform those functions for the Commonwealth of the Northern Mariana Islands.

"The Convention will enter into force for the Common wealth of the Northern Mariana Islands on 30 May 1994."

Each request for service should be accompanied by an international money order (not "postal" money order) made payable to the "Treasurer of the United States" in the sum of

$15.00. No fee will be charged for a request for service from any State party to the Convention which does not impose a charge for the service of documents sent from the United States for service under the Convention.

(The address of the U.S. Central Authority for purposes of service under the Convention is: Office of International Judicial Assistance, Department of Justice, Washington, D.C. 20530.)

16 The Permanent Bureau of the Hague Conference on private international law presents its compliments to the Diplomatic Missions of the Member States and to the National Organs and has the honour to inform them that, by instrument deposited on 29 October 1993 with the Ministry of Foreign Affairs of the Kingdom of the Nethetlands,

the Republic of Venezuela

acceded to the above-mentioned Convention.

The instrument of accession contains the following declarations:

Translations

1.—With regard to Article 5, paragraph 3:

"The Republic of Venezuela declares that notices and documents and other items annexed to the notices will be accepted only when they are properly translated into the Spanish language".

2.—With regard to Article 8:

"The Republic of Venezuela does not agree to the exercise of the faculty provided for in the first paragraph of this Article within its territory, in respect of other persons who are not nationals of the country of origin".

3.—With regard to Article 10(a):

"The Republic of Venezuela does not agree to the transmission of documents through postal channels".

4.—With regard to Article 15(a), (b) and (c):

"The Republic of Venezuela declares that `Venezuelan judges shall be empowered to decide when the conditions contained in sections (a), (b) and (c) of this Article are fulfilled, even though they have not received any communication evidencing either the notice or transfer, or delivery of the document".

5.—With regard to Article 16:

"The Republic of Venezuela declares that the request allowed by the third paragraph of this Article shall not be admissible if it is made after the expiration of the period specified in Venezuelan law".

The States which ratified the Convention were notified of the accession by the Netherlands Government on 30 November 1993. Since none of these States raised an objection to the accession within the period of six months specified in Article 28, paragraph 2, the said accession became perfect on 15 June 1994. .

In accordance with Article 28, paragraph 3, the Convention entered into force for the *Republic of Venezuela on 1 July 1994.*

Notification in conformity with Article 31

The Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters of 15 November 1965, has the honour to inform the Members States of the Hague Conference on Private International and the States having acceded to the Convention that in accordance with

Article 2 Venezuela has designated the "Ministry of Foreign Affairs" as the Central Authority.

Notes and Annotations to the Convention

Litigants wishing to serve a person in one of the Convention countries should request copies in duplicate of the three forms prescribed by the Convention: the "Request", the "Certificate" and the "Summary." These forms may be obtained from the offices of the United States Marshals. Upon completion of these forms, the litigants must then transmit them, together with the documents to be served—all in duplicate—to the local process server.

The local process server thereupon mails all these documents to the "Central Authority" abroad. After service has been effected, one copy of the documents served and an executed "Certificate" all be returned to the local process server, who will transmit these documents to the litigant who initiated the request.

——Annotations

"The Effect of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters", 2 Cornell Int'f L.J. 125 (1969).

Julen v. Larson, 25 Cal.App.3d 325, 101 Cal. 796 (1972).

Shoei Kako Co., Ltd. v. Superior Court, 33 Cal.App.3d 808, 109 Cal. 402 (1973).

Rule 4.1. Service of Other Process

(a) Generally. Process other than a summons as provided in Rule 4 or subpoena as provided in Rule 45 shall be served by a United States marshal, a deputy United States marshal, or a person specially appointed for that purpose, who shall make proof of service as provided in Rule 4(1). The process

may be served anywhere within the territorial limits of the state in which the district court is located, and, when authorized by a statute of the United States, beyond the territorial limits of that state.

(b) Enforcement of Orders: Commitment for Civil Contempt. An order of civil commitment of a person held to be in contempt of a decree or injunction issued to enforce the laws of the United States may be served and enforced in any district. Other orders in civil contempt proceedings shall be served in the state in which the court issuing the order to' be enforced is located or elsewhere within the United States if not more than 100 miles from the place at which the order to be enforced was issued.

(Added Apr. 22, 1993, eft'. Dec. 1, 1993.)

ADVISORY COMMITTEE NOTES

1993 Adoption

This is a new rule. Its purpose is to separate those few provisions of the former Rule 4 bearing on matters other than service of a summons to allow greater textual clarity in Rule 4. Subdivision (a) contains no new language.

Subdivision (b) replaces the final clause of the penultimate sentence of the former subdivision 4(f), a clause added to the rule in 1963. The new rule provides for nationwide service of orders of civil commitment enforcing decrees of injunctions issued to compel compliance with federal law. The rule makes no change in the practice with respect to the enforcement of injunctions or decrees not involving the enforcement of federally-created rights.

Service of process is not required to notify a party of a decree or injunction, or of an order that the party show cause why that party should not be held in contempt of such an order. With respect to a party who has once been served with a summons, the service of the decree or injunction itself or of

an order to show cause can be made pursuant to Rule 5. Thus, for example, an injunction may be served on a party through that person's attorney. *Chagas v. United States*, 369 F.2d 643 (5th Cir.1966). The same is true for service of an order to show cause. *Waffensclmidt v. Mackay*, 763 F2d 711 (5th Cir.1985).

The new rule does not affect the reach of the court to impose criminal contempt sanctions. Nationwide enforcement of federal decrees and injunctions is already available with respect to criminal contempt: a federal court may effect the arrest of a criminal contemnor anywhere in the United States, 28 U.S.C. § 3041, and a contemner when arrested may be subject to removal to the district in which punishment may be imposed. Fed.R.Crim.P. 40. Thus, the present law permits criminal contempt enforcement against a contemnor wherever that person may be found.

The effect of the revision is to provide a choice of civil or criminal contempt sanctions in those situations to which it applies. Contempt proceedings, whether civil or criminal, must be brought in the court that was allegedly defied by a contumacious act. *Ex party Bradley*, 74 U.S. 366 (1869). This is so even if the offensive conduct or inaction occurred outside the district of the court in which the enforcement

* * * *

No. 04-1065

Supreme Court, U.S.
FILED
MAR 10 2005
OFFICE OF THE CLERK

In The
Supreme Court of the United States

INTERCONTINENTAL ELECTRONICS, S.p.A., a foreign corporation,

Petitioner,

v.

AMERICAN KEYBOARD PRODUCTS, INC., a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI, jointly and severally,

Respondents.

On Petition For A Writ Of Certiorari To The Michigan Supreme Court

BRIEF IN OPPOSITION

DAVID MICHAEL BARBOUR*
JEFFREY M. SANGSTER
CHRISTOPHER A. CORNWALL
RUDRICK EDWARD BOUCHER
ELIZABETH L. SOKOL
KOTZ, SANGSTER, WYSOCKI AND BERG, PC
400 Renaissance Center, Suite 2555
Detroit, Michigan 48243
(313) 259-8300

*Counsel of Record

Attorneys for Respondents

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Respondents submit that the following question more accurately reflects the lack of merit and significance of Petitioner's Petition for Writ of Certiorari:

Did the Michigan Supreme Court correctly deny leave to appeal the decision of the Michigan Court of Appeals, where it was determined that Respondent complied with all necessary procedural requirements in serving its pleadings upon Petitioner and Petitioner had actual notice of all proceedings undertaken in the trial court?

LIST OF PARTIES

Petitioner Below:

Intercontinental Electronics, S.p.A.

Respondents Below:

American Keyboard Products, Inc.
Robert C. Kotz
Gregory Wysocki

CORPORATE DISCLOSURE STATEMENT

Respondents, American Keyboard Products, Inc., Robert C. Kotz and Gregory Wysocki, by their undersigned attorneys, hereby furnish the following disclosure statement:

1. Full Name of Party Represented: American Keyboard Products, Inc.

2. Is Party a corporation? Yes

    a. Parent corporation: None

    b. List of corporate stockholders that are publicly held companies owning 10% or more of the stock of represented party: None

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES	ii
CORPORATE DISCLOSURE STATEMENT	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	v
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	3
1. Nature Of The Action	3
2. The Proceedings Before The Trial Court, And Events Leading To The Default Judgment Against Intercontinental	4
3. The Proceedings Before The Michigan Court Of Appeals, The Michigan Supreme Court And The Corte D'Appello Di Bologna	3
REASONS FOR DENYING THE PETITION	14
1. No Federal Question Was Presented To The Lower Court, And Therefore, Petitioner Has Failed To Establish Jurisdiction Pursuant To 28 U.S.C. § 1257	15
2. The Trial Court And The Michigan Court Of Appeals Correctly Determined Respondents Were Entitled To The Entry Of A Default Judgment Against Intercontinental	16
3. The Ruling The Petitioner Seeks This Court To Review Is Unpublished And Therefore Has No Precedential Value	18
CONCLUSION	19

TABLE OF AUTHORITIES

Page

CASES

Adams v. Robertson, 520 U.S. 83, 117 S.Ct. 1028, 137 L.Ed.2d 203 (1997) 1, 2, 15

Board of Directors of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987) 1

Heath v. Alabama, 474 U.S. 82, 106 S.Ct. 433, 88 L.Ed.2d 387 (1985) 15

Higgins Lake Property Owners Ass'n v. Gerrish Township, 255 Mich. App. 83, 662 N.W.2d 387 (2003) 19

Howell v. Mississippi, ___ U.S. ___, 125 S.Ct. 856, ___ L.Ed.2d. ___ (2005) 2

Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) 15

New York Central R. Co. v. New York, 186 U.S. 269, 22 S.Ct. 916, 46 L.Ed. 1158 (1902) 3

Oxley Stave Co. v. Butler County, 166 U.S. 648, 17 S.Ct. 709, 41 L.Ed. 1149 (1897) 3

St. Paul Fire & Marine Ins. Co. v. CEI Florida, Inc., 152 FRD 95 (ED Mich, 1993) 17

Staff v. Curtis C. Marder, M.D., P.C., 242 Mich. App. 521, 619 N.W.2d 57 (2000) 17

Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 108 S.Ct. 2104, 100 L.Ed.2d 722 (1988) 18

CONSTITUTION

U.S. Const. amend. XIV 1, 2, 15

Mich. Const. Article I, § 17 2

TABLE OF AUTHORITIES – Continued

Page

STATUTES

28 U.S.C. § 1257 ..... 1, 2, 3, 14, 15

TREATIES

Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at the Hague November 15, 1965 17

RULES

Supreme Court Rule 10 16

Michigan Court Rule 2.107(B)(1) 17

Michigan Court Rule 2.107(C) 18

Michigan Court Rule 2.201(B) 17

Michigan Court Rule 2.603(D)(1) 15

Michigan Court Rule 7.215(C)(1) 18

Respondents, American Keyboard Products, Inc., Robert C. Kotz and Gregory Wysocki, respectfully request that this Court deny Petitioner Intercontinental Electronics, S.p.A.'s Petition for a Writ of Certiorari ("Petition"), seeking review of the October 25, 2004 order of the Michigan Supreme Court declining to review the March 18, 2004 unpublished opinion of the Michigan Court of Appeals. (Pet. App., p. 1a-2a.)

JURISDICTIONAL STATEMENT

Contrary to Petitioner's assertion in its Petition, jurisdiction is not conferred to this Court by way of 28 U.S.C. § 1257. It is well settled the United States Supreme Court will not consider an alleged federal claim "unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review." *Adams v. Robertson*, 520 U.S. 83, 86, 117 S.Ct. 1028, 1029, 137 L.Ed.2d 203 (1997). Petitioner bears the burden of demonstrating that the federal issue was properly presented to the lower court and "[w]hen the highest state court is silent on a federal question before us, we assume that the issue was not properly presented." *Adams*, 520 U.S., at 86, citing *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 550, 107 S.Ct. 1940, 1948, 95 L.Ed.2d 474 (1987).

Here, Petitioner claims that federal due process considerations warrant review of the rulings of the Michigan appellate courts, and it cites to the Fourteenth Amendment of the United States Constitution in its Petition. However, a review of the pleadings presented to the lower courts, as well as the opinion of the Michigan

Court of Appeals, reveals that no federal question was ever articulated to the trial court or the Michigan appellate courts and not a single reference was made to the Fourteenth Amendment. Instead, the lower court pleadings made vague references to "due process" considerations and relied almost exclusively on case law based upon Michigan's due process clause found at Article I, § 17 of the Michigan Constitution. Further, the opinion of the Michigan Court of Appeals makes no reference to federal due process concerns.

Moreover, Petitioner's vague "due process" reference before the Court of Appeals was not preserved for appellate review. As to Petitioner's claim its due process rights were violated by way of service of Respondents' counterclaim in conformity with the Michigan Court Rules, that issue was never raised either before the trial court, the Michigan Court of Appeals or the Michigan Supreme Court. As to Petitioner's second issue, that it was denied due process because it did not receive "reasonable" notice of the hearing on the default judgment request, this issue was also not preserved below. As noted by the Michigan Court of Appeals in its March 18, 2004 unpublished opinion, "this issue was not preserved for appellate review because Plaintiff did not raise it in the trial court." (Pet. App., p. 5a.)

This Court has previously ruled that generalized vague references to constitutional protections which fail to clearly cite to the United States Constitution, and which could just as easily refer to state constitutional guarantees, are insufficient to present a federal question under 28 U.S.C. § 1257. See, e.g., *Howell v. Mississippi*, ___ U.S. ___, 125 S.Ct. 856, 859, ___ L.Ed.2d ____ (2005); *Adams v.*

Robertson, 520 U.S. 83, 117 S.Ct. 1028, 137 L.Ed.2d 203 (1997); *New York Central R. Co. v. New York*, 186 U.S. 269, 22 S.Ct. 916, 46 L.Ed. 1158 (1902); *Oxley Stave Co. v. Butler County*, 166 U.S. 648, 17 S.Ct. 709, 41 L.Ed. 1149 (1897). The Petition presented to this Court fails to demonstrate that any federal question was actually raised, passed on, or preserved for appellate review. Accordingly, no jurisdictional basis exists under 28 U.S.C. § 1257.

STATEMENT OF THE CASE

1. Nature of the Action

This is a squabble between businessmen over money. Intercontinental Electronics, S.p.A. ("Intercontinental") filed a complaint claiming American Keyboard Products, Inc. ("AKP"), Robert C. Kotz ("Kotz") and Gregory Wysocki ("Wysocki") (collectively the "AKP Parties"), jointly and severally, owed it $26,400. The AKP Parties counterclaimed for damages they incurred by virtue of Intercontinental's intentional destruction of AKP. That is, after misrepresenting its intent to foster AKP's exclusive right to market Intercontinental's products in the United States and Canada, Intercontinental opened a directly competing business, stole AKP's principal employees, misappropriated AKP's business, and intentionally put AKP out of business after AKP expended a substantial amount of money to develop a distribution system.

Intercontinental answered AKP's counterclaim, but soon thereafter abandoned the action. Intercontinental permitted its counsel to withdraw and failed to appear for a status conference, a default for which the Circuit Court dismissed Intercontinental's complaint. Intercontinental

continued to ignore the litigation, despite numerous notices of various events. As a result of Intercontinental's decision to ignore the case, the Circuit Court ultimately entered a Default against Intercontinental on AKP's counterclaim and, seven months later, entered a Default Judgment.

After the Default Judgment was entered, Intercontinental filed a motion to set it aside and claimed (for the first time) its insurer, EULER- Sociata Italiana Assicurazione Crediti S.p.A. ("EULER") had already paid in full AKP's alleged debt to Intercontinental; EULER was really the Plaintiff; and that Intercontinental was not responsible for anything that occurred in the litigation because EULER's attorney was supposed to take care of it. (Pet. App., p. 28a-42a.) The Circuit Court did not believe Intercontinental's story. It found Intercontinental had properly received notice of the default and did not establish good cause to set aside the Default Judgment, and entered its June 12, 2002 Order denying Intercontinental's Motion to Set Aside Default Judgment.

2. The Proceedings Before The Trial Court, and Events Leading to the Default Judgment against Intercontinental

In July 2001, Attorney Richard G. Roosen filed a Complaint and Amended Complaint on behalf of Intercontinental. Intercontinental was the sole Plaintiff. An "Affidavit of Account" was sworn to and executed by Intercontinental's counsel, Roosen, on behalf of "Intercontinental Electronics, S.p.A." as its "Agent & Attorney in Fact," attesting to the amount claimed owed by AKP.

After commencing its lawsuit, Intercontinental proceeded like any litigant and, among other things, filed Plaintiff's Witness List on December 13, 2000; served Plaintiff's Interrogatories to Defendant on or about January 10, 2001; and, approved as to form the First Stipulated Order Modifying Scheduling Order on or about January 10, 2001.

After investigating the underlying facts, the AKP Parties filed and served upon Intercontinental's counsel their Motion to Extend Dates and Allow Defendants to File Counterclaim ("Counterclaim Motion") on March 1, 2001. A little over a month later, Intercontinental, through its attorney, Roosen, stipulated to the portion of the AKP Counterclaim Motion requesting an Order Modifying the Scheduling Order. Intercontinental, however, did not then or at any other time file a response to AKP's Counterclaim Motion with respect to the issue of AKP filing its counterclaims.

During the period of time between when Intercontinental's counsel learned the AKP Parties intended to pursue counterclaims and the actual filing of the Countercomplaint, Roosen was communicating with Intercontinental about the possible counterclaims and was trying to get direction from Intercontinental how he, on behalf of Intercontinental, should proceed. Among other things:

- On March 3, 2001, EULER electronically mailed to Intercontinental an attorney letter about the counterclaim to which Intercontinental did not respond. *See* EULER March 31, 2002 facsimile cover letter, in which EULER writes "the attorney letter of February 20th . . . was E-mailed to you on March 3. . . ." (Pet. App., p. 56a.)

- On March 31, 2001, EULER reminded Intercontinental it has not responded to the February 20 Roosen letter:

  > We have no record of any response to attorney's letter of February 20th which was E-mailed to you on March 3rd. The attorney requested an immediate response from your insured at that time. It now appears that if the debtor prevails and files a counterclaim the attorney will request a retainer in advance to defend the counterclaim against which he will bill on an hourly basis. (Pet. App., p. 56a.)

- Intercontinental admits it was informed that "AKP was considering filing a counterclaim and that KKG&R would defend the counterclaim and 'bill on an hourly basis' after receiving a 'retainer.'"

Following the April 11, 2001 hearing on the remaining issue presented by the Counterclaim Motion, the Court entered its Order Allowing the Defendants to File Counterclaim dated April 11, 2001 ("Counterclaim Order"), which the AKP Parties served upon Intercontinental's counsel. Pursuant thereto, on April 25, 2001, the AKP Parties filed and served Intercontinental's counsel, Roosen, their Countercomplaint. The Counterclaim alleged fraud, fraudulent inducement, tortious interference with business relationships, business defamation, breach of fiduciary duty, and silent fraud. The Counterclaim also sought exemplary damages based upon Intercontinental's willful, wanton, intentional and malicious conduct, which resulted in humiliation, outrage, business defamation and

indignation in complete disregard for the rights of the AKP shareholders, Kotz and Wysocki.

On May 11, 2001, the AKP Parties filed and served upon Intercontinental's counsel, Roosen, a Notice of Taking Deposition Duces Tecum of a Corporate Designee of Intercontinental. In response thereto, Intercontinental, through its counsel, Roosen, filed Intercontinental's Objection to Deposition Notice Duces Tecum of Corporate Designee of Intercontinental Electronics, S.p.A. and Motion for Protective Order ("Objection and Motion"), which it filed on June 5, 2001, but did not notice for hearing until July 25, 2001. Therein, Intercontinental opined:

> 2. That your Plaintiff/Counter-Defendant is an Italian company with its principal corporate offices outside of the continental United States.
>
> * * *
>
> 5. That pursuant to MCR 2.302(C) and MCR 2.302(B)(1), your Plaintiff/Counter-Defendants objects to said Notice of Taking Deposition Duces Tecum of a Corporation Designee of Intercontinental Electronics, S.p.A. for the reason that:
>
> A. Less burdensome means of discovery have not been utilized by Defendants/ Counter-Plaintiffs in this action that is less expensive and/or burdensome.
>
> B. Said examination is scheduled in a manner that is reasonably believed to unduly annoy or oppress your Plaintiff/ Counter-Defendant in bad faith.

In its Objection and Motion, Intercontinental did not claim Intercontinental's corporate designee was not subject to the jurisdiction of the Oakland County Circuit Court, nor that Intercontinental was not really the Plaintiff.

On June 4, 2001, Intercontinental, through its counsel, filed its Answer to Counter Claim and Affirmative Defenses. (Pet. App., p. 154a-159a.) Intercontinental did not assert as an affirmative defense lack of jurisdiction, failure of service of process or that Intercontinental was not really the Plaintiff.

After Roosen had an opportunity to discuss the Counterclaim with Intercontinental, Roosen told the AKP Parties' counsel "that Intercontinental was not afraid to take a judgment on the counterclaim because it kept all its assets offshore, and out of the reach of AKP," and further, that "Intercontinental considered itself to be 'judgment-proof.'" (Resp. App., p. 1a-3a.) Later, Roosen offered to settle the entire case on the basis that "Intercontinental would dismiss its complaint if AKP would dismiss its counterclaim." (Resp. App., p. 1a-3a.)

On June 20, 2001, Intercontinental's counsel filed Plaintiff's Motion to Withdraw as Counsel, in which Roosen wrote, "Counsel for Plaintiff has repeatedly attempted to obtain Plaintiff's cooperation in representing Plaintiff's legal interest herein," and "has been unable to obtain Plaintiff's cooperation . . . ". Intercontinental's counsel served the Motion to Withdraw on Intercontinental. Intercontinental does not dispute it received its counsel's Motion to Withdraw and did not object thereto.

At the July 18, 2001 hearing on the Motion to Withdraw, Intercontinental's counsel explained to the Court:

> The attorney/client relationship has broken down. As you remember, my client is an Italian business. There are no offices in the U.S. nor are there any salespersons in the U.S. All communications that we've been having with our client are via e-mail. We have been e-mailing our client with statuses, we've been giving them suggestions, and legal counsel which they have promptly either ignoring or refusing and until the point that they're not even communicating with us any more. (Pet. App., p. 150a.)

On July 18, 2001, the Circuit Court granted Roosen's Motion to Withdraw. (Pet. App., p. 144a-146a.) That order provides further:

> IT IS FURTHER ORDERED that Richard G. Roosen shall give Intercontinental Electronics, S.p.A. immediate notice of this Order and shall immediately file proof of service of the notice with the Court and serve same on defendants/ Counter-Plaintiffs;
>
> IT IS FURTHER ORDERED that Intercontinental Electronics, S.p.A. shall have 30 days from the date of this Order to have substitute counsel file an appearance on its behalf;
>
> IT IS FURTHER ORDERED that should Intercontinental Electronics, S.p.A. fail to have an appearance entered on its behalf within 30 days from the date this Order, its Complaint may be dismissed with prejudice and default judgment may be entered against Intercontinental on Defendants/Counter-Plaintiffs' Counter-Complaint;

Roosen served the Withdrawal Order on Intercontinental.

By a July 20, 2001 mailing, the Circuit Court served upon Intercontinental directly a Notice of the August 28, 2001 Pre-Trial Conference. Intercontinental received this Notice, which is indicated in the affidavit filed by Intercontinental in support of its motion to set aside the default judgment. (Pet. App., p. 70a.)

Consistent with Roosen's earlier expression of Intercontinental's lack of concern regarding the Counterclaim and judgment being rendered against it, Intercontinental did not secure new counsel and did not attend the August 28 Pre-Trial Conference. When Intercontinental failed to respond, object or appear at the conference, the Circuit Court entered an Order of Default against Intercontinental (Pet. App., p. 140a-141a.) and an Order Dismissing Intercontinental's Complaint (Pet. App., p. 142a-143a.) In the Default, the Circuit Court reserved the issue of damages for a later date and ordered AKP to serve Intercontinental with the Default and Dismissal Order by mailing them to Intercontinental's principal office. AKP did so and Intercontinental admits receiving the Default and Dismissal Order on September 14, 2001, and again on October 16, 2001. (Pet. App., p. 46a-47a.)

Intercontinental did nothing in response to receiving the Default. Months went by. On May 1, 2002, the AKP Parties filed their Motion for Entry of Judgment Amount. (Pet. App., p. 122a-139a.) On the same day, AKP served that motion and notice of hearing thereon on Intercontinental at the same address and in the same manner as everything else had been served upon Intercontinental to date. AKP scheduled the hearing for May 15, 2002, even though the Michigan Court Rules permitted AKP to schedule the hearing for May 8, 2002.

Intercontinental received the Motion for Entry of Judgment Amount in Italy, not later than May 14, 2002, and "immediately" faxed it to its "U.S. counsel," Nicola Fiordalisi in Chicago, Illinois. (Pet. App., p. 47a.) Intercontinental does not claim, nor can it, that its U.S. counsel called or otherwise contacted AKP, its counsel or the Circuit Court upon receipt of the Motion for Entry of Judgment.

At the May 15, 2002 hearing on the AKP Motion, the Court pushed back the hearing from 8:30 a.m. to about 10:00 a.m. to provide Intercontinental additional time to show up. Intercontinental and its "U.S. counsel" knew this hearing was scheduled at least by the previous day, but did not contact AKP's counsel or the court. After receiving argument and testimony, the Circuit Court granted AKP's motion. (Pet. App., p. 109a-110a.)

By Order of Judgment against Intercontinental dated May 15, 2002, the lower court fixed the amount of AKP's damages and entered judgments in the amounts of $2,352,012.97 against Intercontinental in favor of AKP; $100,000 against Intercontinental in favor of Wysocki; and $100,000 against Intercontinental in favor of Kotz. AKP served the Default Judgment on Intercontinental at the same address and in the same manner. Intercontinental received the Default Judgment on or before May 20, 2002, only four days after service.

On June 5, 2002, Intercontinental's belatedly hired new local counsel filed Plaintiff's Motion to Set Aside Default Judgment, in which it proffered the story – previously untold – that EULER paid Intercontinental the amount Intercontinental claimed was due it from AKP, and that EULER (not Intercontinental) brought this case

on its own behalf under a right of subrogation. Intercontinental opined further that it reasonably relied upon EULER's legal opinion on Michigan law and procedure to ignore the Default Order.

In addition to lacking credibility, Intercontinental's story did not establish good cause for setting aside the Default Judgment, under the Michigan Court Rules. Accordingly, the Circuit Court denied Petitioner's Motion to Set Aside Default Judgment. (Pet. App., p. 14a-27a.) The Court entered its June 12, 2002 Order Denying Motion to Set Aside Default Judgment, from which Intercontinental appealed. (Pet. App., p. 13a.)

3. The Proceedings Before the Michigan Court of Appeals, the Michigan Supreme Court, and the Corte d'Appello di Bologna

On July 7, 2002, Intercontinental filed a claim of appeal with the Michigan Court of Appeals. As reflected in the Michigan Court of Appeals' opinion issued March 18, 2004, the Court of Appeals determined the trial court did not err in refusing to set aside the default judgment. In its unpublished opinion, the Court of Appeals pointed out that many of the issues raised by Intercontinental in its briefing had not been argued before the trial court, and therefore, had not been preserved for appellate review. This finding was made expressly with regard to Intercontinental's argument it was denied due process because it did not receive notice of AKP's motion to enter a default judgment until one day prior to hearing on the motion. However, the Court of Appeals then went on to consider the issue on its merits, finding that because Intercontinental was "properly served under the court rules, received actual notice of the hearing, and knew that a default had been entered

against it, plaintiff's due process rights were not violated." (Pet. App., p. 5a.)

As to Intercontinental's claim it was denied due process because it was not served with AKP's counterclaim, this issue was not raised before the trial court or the Court of Appeals as a due process violation. Instead, Intercontinental argued it was not subject to the trial court's jurisdiction because it was not the real party in interest, and thus, service of the counterclaim could not have been made by service upon Roosen as Intercontinental's counsel as permitted under the Michigan Court Rules. The Court of Appeals rejected this argument as well:

> Plaintiff did not raise the issue of lack of personal jurisdiction either in its answer to the countercomplaint or in its list of affirmative defenses. While plaintiff alleges that it was not "advised in any meaningful form that defendants had filed a counterclaim," the proof of service indicated that the counterclaim was properly served on plaintiff's attorney, and the affidavit by one of plaintiff's officers indicated that plaintiff received notice on March 31, 2001, that defendant was considering filing a counterclaim. If plaintiff's attorney of record improperly represented himself as the attorney for plaintiff, plaintiff's remedy lies in a suit against its counsel. (Pet. App., p. 7a.)

Notably, Intercontinental has heeded this advice from the Court of Appeals and has filed three lawsuits in an effort to recover the damages awarded by the trial court to Respondents. The first two lawsuits are presently pending in the United States District Court for the Eastern District of Michigan, one having been filed against EULER and the

other against Roosen and his law firm. The third lawsuit filed by Petitioner is pending in Italy against EULER.

On October 25, 2004, the Michigan Supreme Court denied Intercontinental's application for leave to appeal "because we are not persuaded that the questions presented should be reviewed by this Court." (Pet. App., p. 1a-2a.)

Once the automatic stay on enforcing judgments imposed by the Michigan Court Rules ended, the AKP Parties began an *exequatur* proceeding in the Bologna Court of Appeals for recognition and enforcement of their judgment in Italy. Intercontinental argued to the Bologna court that due to its appeal, the judgment was not final, and therefore failed to meet one of the criteria set forth in the Italian code for recognizing judgments of foreign states. Respondents submit that this is Petitioner's motivation behind its Petition to this Court and not concerns over due process or the lack thereof.

REASONS FOR DENYING THE PETITION

Three reasons require the Court to deny the Petitioner's request for review of the Michigan Supreme Court's order declining to review the Michigan Court of Appeals' unpublished opinion issued March 18, 2004. First, Petitioner has failed to establish the existence of a federal question, and thus cannot satisfy the jurisdictional requirements of 28 U.S.C. § 1257. Second, both the trial court and the Michigan Court of Appeals correctly determined Respondents were entitled to the entry of a default judgment against Intercontinental. Third, the issue presented is not one which warrants this Court's intervention,

given its unpublished and therefore, non-precedential nature.

1. No Federal Question Was Presented to the Lower Court, and Therefore Petitioner Has Failed to Establish Jurisdiction Pursuant to 28 U.S.C. § 1257.

The jurisdictional requirements of 28 U.S.C. § 1257 are clear. The United States Supreme Court will not review a petitioner's federal claim if it was not presented to, or addressed by, the state court that rendered the decision for which review is sought. *See, Adams v. Robertson*, 520 U.S. 83, 86, 117 S.Ct. 1028, 1029, 137 L.Ed.2d 203 (1997); *Heath v. Alabama*, 474 U.S. 82, 87, 106 S.Ct. 433, 436-437, 88 L.Ed.2d 387 (1985); *Illinois v. Gates*, 462 U.S. 213, 217-219, 103 S.Ct. 2317, 2321-2322, 76 L.Ed.2d 527 (1983).

Here, a review of Petitioner's trial court pleadings, as well as the ruling of the Michigan Court of Appeals readily confirms that no federal question was preserved for appellate review. At no point within Petitioner's trial court motion to set aside the default judgment did Petitioner ever mention the Fourteenth Amendment of the United States Constitution or make any argument based upon Federal jurisprudence. (Pet. App., p. 28a-108a.) Instead, Petitioner's motion to set aside the default judgment was based solely upon MCR 2.603(D)(1), the provision of the Michigan Court Rules which addresses setting aside a default or default judgment. (Pet. App., p. 184a-187a.) Petitioner's trial court briefing was limited to the issues of good cause and the existence of a meritorious defense, as must generally be shown under Michigan law in order to set aside a default or default judgment.

This failure to raise due process concerns before the trial court was expressly recognized in the opinion issued by the Michigan Court of Appeals. (Pet. App., p. 3a-13a.) This defect is fatal to Intercontinental's Petition.

2. The Trial Court and the Michigan Court of Appeals Correctly Determined Respondents Were Entitled to the Entry of a Default Judgment against Intercontinental.

In addition to lacking jurisdiction, Intercontinental's Petition lacks merit. Intercontinental's arguments can be reduced to one simple assertion – "due process" was denied Petitioner despite Respondents' compliance with all requirements regarding service of process, and despite Intercontinental's actual notice of proceedings pending against it.

Intercontinental first contends the lower courts failed to make a factual determination as to whether they were the real party in interest, which according to Intercontinental, it is not. Intercontinental's theory ignores both fact and law. As a factual issue, the determination of whether Intercontinental was the real party in interest does not present a federal question for review by this Court. As stated in Supreme Court Rule 10, "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." As evidence supporting its determination, the trial court and the appellate court had before it abundant evidence that Intercontinental was in fact, the real party in interest, including perhaps most importantly, Intercontinental's admission it knew a lawsuit had been filed in its name by attorney Richard Roosen, with its consent! (Pet. App., p. 44a-45a.) Intercontinental has never explained how it could agree to be

named as a plaintiff in a lawsuit by counsel representing its interests, yet not really be the "real party in interest."

Further, Intercontinental's claim ignores the fact that MCR 2.201(B), which governed the action filed by Richard Roosen, requires complaints to be filed in the name of the real party in interest. (Pet. App., p. 178a-183a.) Compliance with the Michigan Court Rules is required and parties are charged with having knowledge of the Michigan Court Rules. *See, e.g., Staff v. Curtis C. Marder, M.D., P.C.*, 242 Mich. App. 521, 619 N.W.2d 57 (2000); *St. Paul Fire & Marine Ins. Co. v. CEI Florida, Inc.*, 152 FRD 95, 97 (ED Mich, 1993). Thus, the only way Intercontinental's argument can succeed is by Intercontinental admitting that it permitted flagrant non-compliance with the Michigan Court Rules when it suited its interests. By permitting a lawsuit to be prosecuted in its name, Intercontinental subjected itself to the Michigan Court Rules. Those rules, specifically MCR 2.107(B)(1), permit Intercontinental to be served with a counterclaim by mailing it to Intercontinental's attorney of record. (Pet. App., p. 174a-177a.)

Indeed, service of all judicial documents on Intercontinental met all applicable legal standards. Intercontinental complains about service of the motion for entry of default judgment. Yet, service of this document by mail was consistent with the manner and quality of service prescribed by the Michigan Court Rules and the *Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at the Hague November 15, 1965* ("Hague Convention"). (Pet. App., p. 188a-271a.) Under Article 10(a) of the Hague Convention, unless a signatory country objects, service of judicial documents may be made "by postal channels, directly to persons abroad." (Pet. App., p. 195a-196a.) Italy has not objected to this provision of

the Hague Convention, and thus, service of the motion for entry of default judgment and the notice of hearing thereon by mailing them to Intercontinental in Italy satisfied the manner of service required by the Hague Convention. Similarly, sending subsequent judicial documents by mail meets the requirements of the Michigan Court Rules. See MCR 2.107(C) (" . . . Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings . . . ") (Pet. App., p. 175a.) Simply put, Intercontinental was properly served. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 700, 108 S.Ct. 2104, 100 L.Ed.2d 722 (1988) ("The legal sufficiency of a formal delivery of documents must be measured against some standard. The Convention does not prescribe a standard, so we almost necessarily must refer to the internal law of the forum state.")

Moreover, consistent with its failure to preserve any federal appellate issue, Intercontinental never contended before the trial court that service of the motion was insufficient under the Hague Convention. Instead, it was Respondents who raised the issue, in order to assure the trial court that all service requirements had been satisfied.

3. The Ruling that Petitioner Seeks this Court to Review Is Unpublished and Therefore Has No Precedential Value.

While Intercontinental's Petition is taken from an order of the Michigan Supreme Court that declines to grant review, the substantive opinion from which Petitioner seeks relief is the March 18, 2004 opinion of the Michigan Court of Appeals. That opinion is unpublished, which pursuant to MCR 7.215(C)(1) "is not precedentially

binding under the rule of stare decisis." (Resp. App., p. 5a.) See also, *Higgins Lake Property Owners Ass'n v. Gerrish Township*, 255 Mich. App. 83, 662 N.W.2d 387 (2003).

Given its lack of precedence, there is no reason for this Court to review the Court of Appeals opinion, or the Michigan Supreme Court order declining review. The ruling will not serve to change or otherwise have a determinative impact on Michigan or Federal jurisprudence and further, will not have any impact upon future cases that raise similar issues. In short, this ruling will impact no one but the parties. Given this Court's need to limit its review to cases that present legal issues of great significance, Petitioner fails to demonstrate how review of this matter will have any impact on any future rulings of any court in any case.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

DAVID MICHAEL BARBOUR*
JEFFREY M. SANGSTER
CHRISTOPHER A. CORNWALL
RUDRICK EDWARD BOUCHER
ELIZABETH L. SOKOL
KOTZ, SANGSTER, WYSOCKI AND BERG, PC
400 Renaissance Center, Suite 2555
Detroit, Michigan 48243
(313) 259-8300

* *Counsel of Record*

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

INTERCONTINENTAL ELECTRONICS, S.P.A.,
a foreign corporation,

Plaintiff/Counter-Defendant,

vs.

AMERICAN KEYBOARD PRODUCTS, INC,
a Michigan corporation, ROBERT C. KOTZ and
GREGORY WYSOCKI, Jointly and Severally,

Defendants/Counter-Plaintiffs.

_____/

KOTZ, SANGSTER, WYSOCKI AND BERG, P.C.
By: Christopher A. Cornwall (P42721)
Attorneys for Third-Party Defendants
400 Renaissance Center, Ste. 2555
Detroit, Michigan 48243
(313) 259-8300

_____/

AFFIDAVIT OF CHRISTOPHER A. CORNWALL

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

1. I have personal, first-hand knowledge of the facts stated in this affidavit, and if called as a witness at trial, could testify competently about them.

2. I am one of the attorneys who represent American Keyboard Products, Inc. ("AKP") in the above-captioned matter.

3. During the course of litigation, counsel for Intercontinental Electronics, S.P.A. ("intercontinental"), Richard Ronson, and I had many conversations about the litigants and about the merits of their claims.

4. During one conversation, Mr. Roosen told me that Intercontinental was not afraid to take a judgment on the counterclaim because it kept all its assets offshore, and out of the reach of AKP. He said Intercontinental considered itself to be "judgment-proof."

5. During yet another conversation, Mr. Roosen told me Intercontinental would, dismiss its complaint if AKP would dismiss its counterclaim.

6. During another conversation, which took place at the hearing on his motion to withdraw as counsel, Mr. Roosen told me that Intercontinental was his client and that all future notices should be sent to its office on Via Belvedere Fogliense in Mondaino, Italy.

7. In none of our conversations during the year in which we litigated this matter did Mr. Roosen ever imply that he represented a party that was suing as subrogee, or that Intercontinental had been paid by its insurer, due to a unique feature of Italian law or otherwise.

8. Intercontinental never disclosed a subrogation agreement and never disclosed the fact it had been paid during any of the discovery that had been conducted during the course of litigation.

FURTHER AFFIANT SAYETH NOT.

/s/ Christopher A. Cornwall
CHRISTOPHER A. CORNWALL

Subscribed and sworn to before
me this 7th day of June, 2002.

/s/ Margaret Moye
MARGARET MOYE, Notary Public
Wayne County, Michigan
My Commission Expires: 07/26/05

MICHIGAN RULES OF COURT

RULE 7.215 OPINIONS, ORDERS, JUDGMENTS, AND FINAL PROCESS FROM COURT OF APPEALS

(A) Opinions of Court. An opinion must be written and bear the writer's name or the label "per curiam" or "memorandum" opinion. An opinion of the court that bears the writer's name shall be published by the Supreme Court reporter of decisions. A memorandum opinion shall not be published. A per curiam opinion shall not be published unless one of the judges deciding the case directs the reporter to do so at the time it is filed with the clerk. A copy of an opinion to be published must be delivered to the reporter no later than when it is filed with the clerk. The reporter is responsible for having those opinions published as are opinions of the Supreme Court, but in separate volumes containing opinions of the Court of Appeals only, in a form and under a contract approved by the Supreme Court.

(B) Standards for Publication. A court opinion must be published if it:

(1) establishes a new rule of law;

(2) construes a provision of a constitution, statute, ordinance, or court rule;

(3) alters or modifies an existing rule of law or extends it to a new factual context;

(4) reaffirms a principle of law not applied in a recently reported decision;

(5) involves a legal issue of continuing public interest;

(6) criticizes existing law;

(7) creates or resolves an apparent conflict of authority, whether or not the earlier opinion was reported; or

(8) decides an appeal from a lower court order ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branch of state government is invalid.

(C) Precedent of Opinions.

(1) An unpublished opinion is not precedentially binding under the rule of stare decisis. A party who cites an unpublished opinion must provide a copy of the opinion to the court and to opposing parties with the brief or other paper in which the citation appears.

(2) A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis. The filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals.

(D) Requesting Publication.

(1) Any party may request publication of an authored or per curiam opinion not designated for publication by

(a) filing with the clerk 4 copies of a letter stating why the opinion should be published, and

(b) mailing a copy to each party to the appeal not joining in the request, and to the clerk of the Supreme Court.

Such a request must be filed within 21 days after release of the unpublished opinion or, if a timely motion for rehearing is filed, within 21 days after the denial of the motion.

(2) Any party served with a copy of the request may file a response within 14 days in the same manner as provided in subrule (D)(1).

(3) Promptly after the expiration of the time provided in subrule (D)(2), the clerk shall submit the request, and any response that has been received, to the panel that filed the opinion. Within 21 days after submission of the request, the panel shall decide whether to direct that the opinion be published. The opinion shall be published only if the panel unanimously so directs. Failure of the panel to act within 21 days shall be treated as a denial of the request.

(4) The Court of Appeals shall not direct publication if the Supreme Court has denied an application for leave to appeal under MCR 7.302.

(E) Judgment.

(1) When the Court of Appeals disposes of an original action or an appeal, whether taken as of right, by leave granted, or by order in lieu of leave being granted, its opinion or order is its judgment. An order denying leave to appeal is not deemed to dispose of an appeal.

(2) The clerk shall send a certified copy of the opinion or order, with the date of filing stamped on it, to each party and, in an appeal, to the court or tribunal from which the appeal was received. In criminal cases, the clerk shall provide an additional copy of any opinion or order disposing of an appeal or of any order denying leave to

appeal to the defendant's lawyer, which the lawyer must promptly send to the defendant. An opinion or order is notice of the entry of judgment of the Court of Appeals.

(F) Execution and Enforcement.

(1) *Routine Issuance.* Unless otherwise ordered by the Court of Appeals or the Supreme Court or as otherwise provided by these rules,

> (a) the Court of Appeals judgment is effective after the expiration of the time for filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court;
>
> (b) execution on the Court of Appeals judgment is to be obtained or enforcement proceedings had in the trial court or tribunal after the record has been returned (by the clerk under MCR 7.210[I] or by the Supreme Court clerk under MCR 7.311[B]) with a certified copy of the court's judgment or, if a record was not transmitted to the Court of Appeals, after the time specified for return of the record had it been transmitted.

(2) *Exceptional Issuance.* The court may order that a judgment described in subrule (E) has immediate effect. The order does not prevent the filing of a motion for rehearing, but the filing of the motion does not stay execution or enforcement.

(G) Entry, Issuance, Execution on, and Enforcement of All Other Orders. An order other than one described in subrule (E) is entered on the date of filing. The clerk must promptly send a certified copy to each party and to the trial court or tribunal. Unless otherwise stated, an order is effective on the date it is entered.

(H) Certain Dispositive Orders and Opinions in Criminal Cases; Expedited Notice to Prosecutor. In a criminal case, if the prosecuting attorney files a notice of a victim's request for information and proof that copies of the notice were served on the other parties to the appeal, then, coincident with issuing an order or opinion that reverses a conviction, vacates a sentence, remands a case to the trial court for a new trial, or denies the prosecuting attorney's appeal, the clerk of the court must electronically transmit a copy of the order or opinion to the prosecuting attorney at a facsimile number or electronic mail address provided by the prosecuting attorney in the notice.

(I) Reconsideration.

(1) A motion for reconsideration may be filed within 21 days after the date of the order or the date stamped on an opinion. The motion shall include all facts, arguments, and citations to authorities in a single document and shall not exceed 10 double-spaced pages. A copy of the order or opinion of which reconsideration is sought must be included with the motion. Motions for reconsideration are subject to the restrictions contained in MCR 2.119(F)(3).

(2) A party may answer a motion for reconsideration within 14 days after the motion is served on the party. An answer to a motion for reconsideration shall be a single document and shall not exceed 7 double-spaced pages.

(3) The clerk will not accept for filing a motion for reconsideration of an order denying a motion for reconsideration.

(4) The clerk will not accept for filing a late motion for reconsideration.

(J) Resolution of Conflicts in Court of Appeals Decisions.

(1) *Precedential Effect of Published Decisions.* A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule.

(2) *Conflicting Opinion.* A panel that follows a prior published decision only because it is required to do so by subrule (1) must so indicate in the text of its opinion, citing this rule and explaining its disagreement with the prior decision. The panel's opinion must be published in the official reports of opinions of the Court of Appeals.

(3) *Convening of Special Panel.*

(a) Poll of Judges. Except as provided in subrule (3)(b), within 28 days after release of the opinion indicating disagreement with a prior decision as provided in subrule (2), the chief judge must poll the judges of the Court of Appeals to determine whether the particular question is both outcome determinative and warrants convening a special panel to rehear the case for the purpose of resolving the conflict that would have been created but for the provisions of subrule (1). Special panels may be convened to consider outcome-determinative questions only.

(b) Effect of Pending Supreme Court Appeal. No poll shall be conducted and a special panel shall not be convened if, at the time the judges are required to be polled, the Supreme Court has granted leave to appeal in the controlling case.

(c) Order. Immediately following the poll, an order reflecting the result must be entered. The chief clerk of the Court of Appeals must provide a copy of the order to the Clerk of the Supreme Court. The order must be published in the official reports of opinions of the Court of Appeals.

(4) *Composition of Panel.* A special panel convened pursuant to this rule consists of 7 judges of the Court of Appeals selected by lot, except that judges who participated in either the controlling decision or the opinion in the case at bar may not be selected.

(5) *Consideration of Case by Panel.* An order directing the convening of a special panel must vacate only that portion of the prior opinion in the case at bar addressing the particular question that would have been decided differently but for the provisions of subrule (1). The special panel shall limit its review to resolving the conflict that would have been created but for the provisions of subrule (1) and applying its decision to the case at bar. The parties are permitted to file supplemental briefs, and are entitled to oral argument before the special panel unless the panel unanimously agrees to dispense with oral argument. The special panel shall return to the original panel for further consideration any remaining, unresolved issues, as the case may require.

(6) *Decision.* The decision of the special panel must be by published opinion or order and is binding on all panels of the Court of Appeals unless reversed or modified by the Supreme Court.

(7) *Reconsideration; Appeal.* There is no appeal from the decision of the Court of Appeals as to whether to convene a special panel. As to the decision in the case at

bar, the time limits for moving for reconsideration or for filing an application for leave to appeal to the Supreme Court run from the date of the order declining to convene a special panel or, if a special panel is convened, from the date of the decision of the special panel, except that, if the case is returned to the original panel for further consideration in accordance with subrule (5), the time limits shall run from the date of the original panel's decision, after return from the special panel. If a motion for reconsideration is filed, it shall be submitted to the special panel, which, if appropriate, may refer some or all of the issues presented to the original panel.